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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 13 CR 20904
)	
MARLON BARKSDALE,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* The fines, fees and costs order is modified.

¶ 2 Defendant Marlon Barksdale was convicted of one count of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2012)) and, based on his criminal history, sentenced to a Class X term of seven and one half years in prison. On appeal, Barksdale challenges various assessed fines and fees. (In his opening brief, Barksdale argued that he did not receive the correct number of presentence custody credits. But, in his reply brief, he acknowledges that he had miscalculated, and withdrew this argument.)

¶ 3 We order modification of the fines, fees, and costs order. We reject Barksdale’s arguments regarding presentence custody credit toward the \$15 document storage fee, the \$15 automation fee, and the \$2 public defender records automation fee. These assessments are fees and not fines. They were costs the State incurred as a “result” of prosecuting a defendant, which the Illinois Supreme Court requires for a charge to be considered a “fee.” We agree, however, that Barksdale is entitled to \$5 per day of presentence credit toward: (i) \$10 mental health court fine, (ii) \$5 youth diversion/peer court fine, (iii) \$5 drug court fine, (iv) \$30 Children’s Advocacy Center fine, (v) \$30 fine to fund juvenile expungement, (vi) \$15 State Police operations fee, and (vii) \$50 court system fee. And we vacate the \$5 electronic citation fee charged against Barksdale.

¶ 4 BACKGROUND

¶ 5 The trial court found Barksdale guilty of possession of a stolen motor vehicle and, based on his criminal history, sentenced him to a Class X term of seven and one half years in prison. Although the trial court orally sentenced defendant to a Class X term based on background, the mittimus does not reflect this. The trial court’s oral pronouncement controls. *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007).

¶ 6 ANALYSIS

¶ 7 Barksdale contends on appeal that the assessed fines, fees and costs should be reduced by a total of \$184 because (i) the fines should be offset by his presentence custody credit, (ii) certain assessments labeled as “fees” are actually “fines” and should be offset by his presentence custody credit, and (iii) the \$5 electronic citation fee should be vacated.

¶ 8 As an initial matter, Barksdale did not raise this challenge in the trial court but urges us to review it under the plain error doctrine. A sentencing error may affect a defendant's substantial rights, and thus, we may review it for plain error. *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 20 (where on appeal defendant challenged calculation and assessment of pecuniary penalties, this court reviewed issue, stating, "Although defendant did not raise these claims in the circuit court, this court has recognized that a sentencing error may affect defendant's substantial rights, and thus can be reviewed for plain error."). Further, the State points out that Barksdale could and should have raised the fines and fees issues in the trial court. But, the State does not argue that the issues are forfeited, and thus, has forfeited any forfeiture argument. Ill. S.C. R. 341(h)(7), (i) (eff. Jan. 1, 2016) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); *People v. McKown*, 236 Ill. 2d 278, 308 (2010) ("The State, however, failed to bring defendant's forfeiture of the issue to the attention of the appellate court. In effect, the State forfeited its ability to argue forfeiture by the defendant."). On appeal, the reviewing court may modify the fines and fees order without remanding the case to the circuit court. Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967). The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 9 Barksdale contends that the fines charged against him should be offset by his presentence custody credit in the amount of \$5 per day. Under section 110-14(a) of the Code of Criminal Procedure, Barksdale is entitled to a credit of \$5 toward his fines for each day he was incarcerated before his sentencing. 725 ILCS 5/110-14(a) (West 2014). "The plain language of this statute indicates that the credit applies only to 'fines' that are imposed pursuant to a

conviction, not to any other court costs or fees.” *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006).

¶ 10 A “fine” is considered to be “part of the punishment for a conviction,” and a “fee” is imposed to “recoup expenses incurred by the state—to ‘compensat[e]’ the state for some expenditure incurred in prosecuting the defendant.” *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Even if the statute labels a particular charge a “fee,” it still may be considered a “fine.” *Jones*, 223 Ill. 2d at 599. When determining whether a charge is considered a fine or a fee, the “legislature’s label is strong evidence, but it cannot overcome the actual attributes of the charge.” *Id.* “[T]he most important factor is whether the charge seeks to compensate the State for any costs incurred as the result of prosecuting the defendant.” *People v. Graves*, 235 Ill. 2d 244, 250 (2009). “Other factors to consider are whether the charge is only imposed after conviction and to whom the payment is made.” *Graves*, 235 Ill. 2d at 251. The fines, fees, and costs order provides that Barksdale was in presentence custody credit for 122 days, and therefore, he is entitled to \$610 in presentence custody credit.

¶ 11 Barksdale also contends that the \$10 mental health court (55 ILCS 5/5-1101(d-5) (West 2014)), the \$5 youth diversion/peer court (55 ILCS 5/5-1101(e) (West 2014)), the \$5 drug court (55 ILCS 5/5-1101(f) (West 2014)), the \$30 Children’s Advocacy Center (55 ILCS 5/5-1101(f-5) (West 2014)), and the \$30 fine to fund juvenile expungement (730 ILCS 5/5-9-1.17(a) (West 2014)) assessments should be offset by his presentment custody credit. The State does not respond to Barksdale’s argument with respect to these charges, and thus concedes the issue. *In re Deborah S.*, 2015 IL App (1st) 123596, ¶ 27 (where appellant raised several issues, but State did not address or respond to issues in its brief, this court noted that State “essentially conceded

these issues on appeal”). We agree with Barksdale that these assessments are properly considered “fines.” *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 18 (“The drug-court fee is considered a fine because it is not intended to reimburse the State for costs incurred in prosecuting the defendant.”); *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009) (the \$30 Children’s Advocacy Center charge is a “fine”); *People v. Paige*, 378 Ill. App. 3d 95, 102 (2007) (concluding that mental health court and youth diversion/peer court charges are “properly characterized as ‘fines,’” noting, “the \$10 mental health court charge and the \$5 youth diversion/peer court charge may each properly be viewed as a criminal penalty or pecuniary punishment”); *People v. Smith*, 2014 IL App (4th) 121118, ¶ 61 (\$30 juvenile-expungement assessment is considered a fine).

¶ 12 Because these assessments are fines, Barksdale is entitled to receive presentence custody credit against these fines. The fines, fees, and costs order does not show that Barksdale received presentence custody credit toward these assessments. And so we order the clerk of the circuit court to award Barksdale \$5 per day of presentence custody credit toward the \$10 mental health court, the \$5 youth diversion/peer court, the \$5 drug court, the \$30 Children’s Advocacy Center, and the \$30 fine to fund juvenile expungement assessments.

¶ 13 Barksdale next argues that six of the charges assessed against him, the \$15 State Police operations fee, the \$2 public defender records automation fee, the \$2 State’s Attorney records automation fee, the \$15 document storage fee, the \$50 court system fee, and the \$15 automation fee, should be offset by his presentence custody credit because these assessments are actually considered “fines.” The State concedes that two of these charges, the \$15 State Police operations fee and \$50 court system fee, are considered fines and, therefore, should be offset.

¶ 14 We agree with the parties that the \$15 State Police operations fee (705 ILCS 105/27.3a (1.5) (West 2014)) and the \$50 court system fee (55 ILCS 5/5-1101(c) (1) (West 2014)) are considered “fines” because these assessments do not reimburse the State for expenses incurred in Barksdale’s prosecution. *People v. Milsap*, 2012 IL App (4th) 110668, ¶ 31 (“we find that the State Police Operations Assistance fee does not reimburse the State for costs incurred in defendant’s prosecution”); *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21 (awarding defendant credit for court system fee imposed under section 5-1101(c) of Counties Code, stating, “Most important, the assessment is not intended or geared to compensate the State (or the county) for the cost of prosecuting a defendant.”). Thus, we order the clerk of the circuit court to award \$5 per day of presentence custody credit toward the \$15 State Police operations and the \$50 court system assessments.

¶ 15 Barksdale next argues that the \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2014)) and the \$2 State’s Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)) are considered “fines” and that they should be offset by his presentence custody credit. (As defendant correctly points out, the fines, fees and costs order provides that the section in the Counties Code authorizing the \$2 State’s Attorney records automation fee is section 4-2002.1(a), but the section authorizing this assessment is actually contained in section 4-2002.1(c)). The State asserts that the \$2 public defender records automation fee should be vacated because Barksdale was represented by private counsel and maintains that the \$2 State’s Attorney records automation fee is considered a “fee” that cannot be offset by presentence custody credit.

¶ 16 We initially note that, from our review of the fines, fees and costs order, it does not appear that the box next to the \$2 State's Attorney records automation fee is checked off as an assessment that was imposed on Barksdale or that this \$2 charge was included in the total amount of fines and fees assessed against him. Hence, we need not address whether the State's Attorney records automation fee should be offset against his presentence custody credit. But, even if we were to assume that Barksdale was charged this assessment, our analysis and conclusion would be similar to our analysis and conclusion regarding the public defender records automation charge.

¶ 17 With respect to the \$2 public defender records automation fee, we note that this court has previously held that these types of charges are fees, as opposed to fines, and thus these charges are not subject to being offset by Barksdale's presentence custody credit. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115 (finding the State's Attorney charge to be a fee because it is compensatory in nature and not punitive); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding "no reason to distinguish between the two statutes" given their nearly identical language and concluding that those charges are intended to reimburse those offices for expenses); see also *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 144; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17.

¶ 18 Although the opposite result was reached in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 52-56, which found that the charges do not compensate the State for costs imposed in prosecuting any particular defendant and therefore are not fees, we agree with the analysis in *Warren* and the numerous cases cited above that when a charge does not include a punitive

aspect, it is a fee, not a fine. Thus, Barksdale is not entitled to presentence custody credit to be applied against that assessment.

¶ 19 We recognize that, although the State maintains that the \$2 public defender's automation assessment is considered a "fee," it asserts that we should vacate the assessment because private counsel represented Barksdale. But as we noted in *Camacho*, under section 3-4012 of the Counties Code, the public defender records automation charge may be assessed against a defendant on "a judgment of guilty * * * [for] any felony, misdemeanor, or petty offense." *Camacho*, 2016 IL App (1st) 140604, ¶ 51 (Emphasis in original.); 55 ILCS 5/3-4012 (West 2014). We held that "[b]ased on this language, the assessment may be applied against a guilty defendant even when the public defender does not represent him." *Camacho*, 2016 IL App (1st) 140604, ¶ 51. So, even though private counsel represented Barksdale at trial, we conclude that the \$2 public defender records automation fee should neither be offset by Barksdale's presentence custody credit nor vacated.

¶ 20 Barksdale next argues that the \$15 document storage fee (705 ILCS 105/27.3c (a) (West 2014)) and the \$15 automation fee (705 ILCS 105/27.3a (1) (West 2014)) are considered "fines" because these charges do not compensate the state for the costs incurred to prosecute him. The State maintains that these assessments are fees.

¶ 21 In *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that the document storage and automation assessments were fees because "these charges are compensatory and a collateral consequence of defendant's conviction." Barksdale asserts that *Tolliver* is contrary to the supreme court's decision in *Graves*, which stated that "'A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution.'" *Graves*, 235

Ill. 2d at 250 (quoting *Jones*, 223 Ill. 2d at 600). We disagree and conclude that *Tolliver* is consistent with *Graves*. These assessments were a “collateral consequence” of Barksdale’s conviction (*Tolliver*, 363 Ill. App. 3d at 97), and therefore, were costs the State incurred as a “result” of prosecuting a defendant, which *Graves* required for a charge to be considered a “fee.” (*Graves*, 235 Ill. 2d at 250-51). Therefore, we conclude the document storage and automation assessments are fees and not fines. *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (concluding that automation and document storage assessments are fees); *Tolliver*, 363 Ill. App. 3d at 97. Thus, Barksdale is not entitled to presentence custody credit to be applied against these assessments.

¶ 22 Finally, Barksdale argues, and the State concedes, that we should vacate the \$5 electronic citation fee. Section 105 of the Clerk of Courts Act provides that the circuit court clerk may collect an electronic citation fee in “any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision.” 705 ILCS 105/27.3e (West 2014). This fee does not apply to felonies. *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. Barksdale was convicted of the offense of possession of a stolen motor vehicle, which is a Class 2 felony. 625 ILCS 5/4-103(a)(1), (b) (West 2012). We vacate the \$5 electronic citation fee.

¶ 23 Barksdale is not entitled to presentence custody credit toward the \$15 document storage fee, the \$15 automation fee, and the \$2 public defender records automation fee. He is, however, entitled to \$5 per day of presentence credit toward the following assessments: the \$10 mental health court fine, the \$5 youth diversion/peer court fine, the \$5 drug court fine, the \$30 Children’s Advocacy Center fine, the \$30 fine to fund juvenile expungement, the \$15 State

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Police operations fee, and the \$50 court system fee. We vacate the \$5 electronic citation fee charged against Barksdale.

¶ 24 Under Illinois Supreme Court Rule 615(b) (1) (eff. Jan. 1, 1967), we order the clerk of the circuit court to modify the fines, fees, and costs order accordingly. *Camacho*, 2016 IL App (1st) 140604, ¶ 57. The judgment of the circuit court is affirmed in all other respects.

¶ 25 Affirmed; fines, fees, and costs order modified.