2017 IL App (1st) 150659-U

No. 1-15-0659

Order filed March 15, 2017

Third Division

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 4173
	)	
TATIANA WEBBS,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Lavin and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Two charges imposed against defendant as part of her conviction were erroneously assessed and are vacated. A portion of defendant's presentence custody credit is applied to two fines, thus reducing the total amount of fines and fees owed.

¶ 2 Following a bench trial, defendant Tatiana Webbs was convicted of robbery (720 ILCS 5/18-1(a) (West 2012)). Defendant was sentenced to four years in prison and was assessed various fines and fees, which are the sole subject of this appeal. On appeal, defendant contends

that the $20 probable cause hearing fee and the $5 electronic citation fee were erroneously imposed in this case. Defendant further argues that a portion of her monetary credit for the days that she spent in custody should be applied to several other assessments that she contends are fines. For the reasons set out below, we vacate two of the charges against defendant and order that the fines and fees order be corrected.

¶ 3 At trial, the State presented evidence that on January 12, 2013, defendant, Tatyanna Edwards and Javeir Bouvier robbed two women of their purses and a cell phone. The three defendants were tried in severed joint bench trials and were convicted of armed robbery with a firearm. Following defendant's posttrial motion, her conviction was reduced to robbery. The mittimus indicates defendant was convicted of a Class 2 felony and that she should receive credit for 716 days in custody. Defendant was assessed $729 in fines, fees and other costs.

¶ 4 On appeal, this court reviews *de novo* the propriety of the trial court's imposition of fines and fees because it raises issues of statutory interpretation. *People v. Green*, 2016 IL App (1st) 134011, ¶ 44. Although defendant did not raise a challenge to the fines and fees order in the circuit court, she contends that we can reach this issue under the plain error doctrine. A sentencing error may affect a defendant's substantial rights and therefore can be reviewed under the plain error rule. *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 20. Thus, we can review these charges, and, if necessary, modify the circuit court's order without remanding the case, pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999). See *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 5 We first address defendant's contentions that two charges were imposed in error. First, defendant contends, and the State correctly agrees, that she should not have been assessed a $20

probable cause hearing fee (55 ILCS 5/4-2002.1(a) (West 2012)) because she was charged by indictment and thus, no such hearing was held. See *People v. Smith*, 236 Ill. 2d 162, 170 (2010) (legislature intended that fee to be imposed only where a probable cause hearing was held). Accordingly, that charge is vacated.

¶ 6 Second, the State concedes the $5 electronic citation fee was erroneously imposed. The statute setting out that fee specifies that it only applies to a defendant in "any traffic, misdemeanor, municipal ordinance or conservation case." 705 ILCS 27.3e (West 2012). Here, defendant was convicted of a Class 2 felony, and thus, that charge was incorrectly assessed. See *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. Accordingly, those two charges, which total $25, are vacated.

¶ 7 Defendant's remaining contentions involve the application of presentence custody credit to several other monetary assessments imposed against her. A defendant is entitled to a credit of $5 for each day she is incarcerated prior to sentencing, with that amount to be put toward the fines levied against her as part of her conviction. 725 ILCS 5/110-14(a) (West 2012). Although defendant asserts on appeal that she was in custody for 721 days prior to sentencing, the mittimus states that defendant spent 716 days in custody. As set out above, defendant was assessed $729 in fines, fees and other charges, and we have vacated $25 of those fees. Thus, even if we calculate defendant's credit based on the lesser number of days, she has accrued $3,580 in credit (716 days at $5 per day), which is more than ample to apply to all of the remaining assessments challenged in this appeal.

¶ 8 We now consider which of those charges can be offset by that credit. Before addressing the various charges challenged by defendant, we note that under the plain language of section

110-14(a), that credit can be applied only to fines, not to fees. See 725 ILCS 5/110-14(a) (West 2012); *People v. Johnson*, 2011 IL 111817, ¶ 8. A "fine" is punitive and is "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotations omitted.) *People v. Graves*, 235 Ill. 2d 244, 250 (2009), citing *People v. Jones*, 223 Ill. 2d 569, 581 (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002)). A "fee" is "a charge that seeks to recoup expenses incurred by the state or to compensate the state for some expenditure incurred in prosecuting the defendant." (Internal quotations omitted.) *Graves*, 235 Ill. 2d at 250, citing *Jones*, 223 Ill. 2d at 582. The labeling of a charge as a "fee" or a "fine" by the legislature is not dispositive, and the "most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant." *Graves*, 235 Ill. 2d at 250-51, citing *Jones*, 223 Ill. 2d at 600.

¶ 9 With those definitions in mind, defendant argues, and the State correctly concedes, that two of the assessments that she challenges in this appeal are fines that can be offset by her presentence custody credit. The State agrees that the $15 State Police operations charge (705 ILCS 105/27.3a (1.5) (West 2012)) and the $50 Court System charge (55 ILCS 5/5-1101(c)(1) (West 2012)) are both fines. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 147 (State Police operations charge is a fine); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (Court System charge is a fine). The Court System charge has been deemed to be a fine because it is imposed upon the conviction of each defendant found guilty of a felony, regardless of what transpired in the particular case, and does not compensate the State for prosecuting that particular defendant. *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17. See also *Graves*, 235 Ill. 2d at 253 (costs assessed under section 5-1101 of the Counties Code are "monetary penalties to be paid by

a defendant" upon a judgment of guilty). Accordingly, defendant's presentence custody credit is applied to offset those two charges totaling $65.

¶ 10 However, for the reasons set out below, the remaining charges challenged by defendant cannot be similarly offset. Defendant contends her presentence custody credit should be applied to the clerk's $15 automation charge (705 ILCS 105/27.3a(1), (1.5) (West 2012)) and the $15 document storage charge (705 ILCS 105/27.3c(a) (West 2012)), arguing that those charges constitute fines, not fees, because they do not seek to reimburse the State for costs incurred in her prosecution.

¶ 11 Similarly, defendant asserts that the assessment of $190 for the filing of a felony complaint is a fine, not a fee. She argues that charge is atop a statutory sliding scale of similar assessments based on the severity of the offense, is an "arbitrary figure" meant to reimburse the clerk for its expenses and is unrelated to the costs incurred in her prosecution. See 705 ILCS 105/27.2a(w)(1)(A)-(K) (West 2012). In addition, defendant contends the $25 Court Services (Sheriff) assessment (55 ILCS 5/5-1103 (West 2012)) is a fine because it funds a portion of the court system and applies to all criminal defendants who are found guilty, as opposed to compensating the State for a cost incurred in her prosecution.

¶ 12 This court has held in *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), that those four assessments are fees because they are compensatory and represent a "collateral consequence" of a conviction. The automation and document storage charges help to fund the maintenance of those systems (*People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 29-30), and the statute authorizing the Court Services (Sheriff) charge (55 ILCS 5/5-1103 (West 2012)) expressly states that assessment is intended to defray court expenses and the cost of providing court security. See

People v. Pohl, 2012 IL App (2d) 100629, ¶¶ 11-12. The felony complaint filing charge is a fee, not a fine, because it is compensatory, not punitive in nature. *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42.

¶ 13 Defendant acknowledges *Tolliver* and similar precedent but points out that since *Tolliver* was decided, the supreme court clarified in *Graves* that to be correctly designated as a fee, a charge must reimburse the State for a cost incurred in her prosecution. See *Graves*, 235 Ill. 2d at 250. However, as stated above, those charges represent a portion of the overall costs incurred to prosecute defendant. Several cases decided since *Graves* have found those four charges to be fees. See *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (clerk's automation and document storage charges and sheriff's court services charge are fees); *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68 (those charges, as well as the felony complaint filing assessment, are fees); *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 25-31 (same). The fact that such assessments are not tailored to this defendant's case does not negate that the charges compensate the State in some part for the costs incurred in her prosecution. See *Graves*, 235 Ill. 2d at 250 (a fee recovers the State's costs, *in whole or in any part*, for prosecuting the defendant).

¶ 14 Defendant next contends that a portion of her credit should be applied to the $2 State's Attorney and $2 Public Defender records automation charges. As with the assessments discussed above, defendant argues that those charges do not reimburse the State for costs incurred in prosecuting a particular defendant.

¶ 15 The statute that enacted the State's Attorney records automation charge indicates, in pertinent part, that the $2 amount is assessed "to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems." 55 ILCS 5/4-

2002.1(c) (West 2012). The statute authorizing the $2 Public Defender records automation fee uses the same language as quoted above in regard to the Public Defender's office. 55 ILCS 5/3-4012 (West 2012). We agree with prior decisions that have held those charges are fees, not fines, and thus are not subject to offset by defendant's presentence custody credit. See *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 *Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 144; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (the assessments are fines because they do not compensate the State for any costs associated in prosecuting a particular defendant). We agree with the analysis in *Bowen* and similar cases, because when a charge does not include a punitive aspect, it is a fee, not a fine. Therefore, the State's Attorney and Public Defender records automation charges cannot be offset by defendant's credit.

¶ 16 In conclusion, the $20 probable cause hearing fee and the $5 electronic citation fee imposed against defendant are vacated. Accordingly, defendant owes a total of $704 in charges, as opposed to the $729 imposed by the trial court. Furthermore, defendant is entitled to have two fines, the $15 State Police operations charge and the $50 Court System charge, offset by a portion of her presentence custody credit. Applying that offset, the $704 amount owed by defendant is reduced by another $65 to $639.

¶ 17 Pursuant to Rule 615(b)(1), we order the clerk of the circuit court to correct the fines and fees order to reflect a total amount due of $639.

¶ 18 Affirmed in part, vacated in part; fines and fees order corrected.