2017 IL App (1st) 150902-U

No. 1-15-0902

Order filed April 20, 2017

Fourth 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. 14 CR 8624
	)	
WELDON WILEY,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for burglary and sentence of seven years' imprisonment is affirmed. The $2 State's Attorney Records Automation Fee, the $2 Public Defender Records Automation Fee and the $10 fee for the County Jail Medical Costs Fund are fees, not fines, and thus defendant was not entitled to offset these fees by the monetary credit he received for the time he spent in custody prior to sentencing.

¶ 2 Following a bench trial, defendant Weldon Wiley, was convicted of burglary and sentenced, as a Class X offender, to seven years' imprisonment. He was also assessed various

fines and fees, including the $2 State's Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2014)), the $2 Public Defender Records Automation Fee (55 ILCS 5/3-4012 (West 2014)), and a $10 fee for the County Jail Medical Costs Fund (730 ILCS 125/17 (West 2014)). On appeal, defendant contends that these assessments, totaling $14, are actually fines, not fees, and should be offset by the monetary credit he received for the time he spent in custody prior to sentencing. We affirm.

¶ 3 Defendant, was tried separately but simultaneously with codefendants Charles Johnson and Eric Stallworth. Because defendant does not challenge the sufficiency of the evidence to sustain his conviction, we briefly recount the facts adduced at his bench trial.

¶ 4 The record shows that on May 5, 2014, Juan Lugo and Kevin Cowan saw defendant, along with Johnson and Stallworth, removing items from a building located at 11733 South Lafayette Avenue. The items included duct work, a refrigerator, a sink and other metal objects. Cowan testified that he saw the men pry loose a piece of plywood that was covering the back door of the building and enter the building. The men then removed various items from inside the building and loaded the items onto a blue pickup truck. Lugo immediately notified a local pastor, who called the police and William Jones, the owner of the building. When police arrived, Lugo and Cowan identified, at the scene, defendant, Johnson and Stallworth as the three men they saw removing the items from inside the building. Lugo and Cowan also identified defendant, Johnson and Stallworth in open court.

¶ 5 Jones testified that he owned the building in question and that the building was "boarded up" because it was being renovated. After being alerted of the burglary, Jones drove to the building and observed that the plywood, covering the back door of the building, had been

removed. Jones identified, from photographs, the items removed from the building. He stated that he was not familiar with defendant, Johnson or Stallworth, and did not give them permission to enter the building.

¶ 6 Based on this evidence, the court found defendant guilty of burglary. Defendant was sentenced, as a Class X offender, to seven years' imprisonment and assessed various fines and fees.

¶ 7 On appeal, defendant does not contend that the trial court erred in assessing the fines and fees in question. Rather, his contentions involve the credit he should receive toward the assessed charges. Specifically, defendant argues that the $2 State's Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2014)), the $2 Public Defender Records Automation Fee (55 ILCS 5/3-4012 (West 2014)), and the $10 fee for the County Jail Medical Costs Fund (730 ILCS 125/17 (West 2014)), are actually fines, not fees, and should be offset by the monetary credit he received for the time he spent in custody prior to sentencing.

¶ 8 We review this question of law *de novo*. See *People v. Green*, 2016 IL App (1st) 134011, ¶ 44. In setting forth his argument, defendant acknowledges that he did not raise a challenge to his fines and fees in the circuit court, but contends that we may review this issue under the plain error doctrine. Because the State does not argue forfeiture on appeal, the State has forfeited the claim that the issue raised by defendant is forfeited. See *People v. Whitfield*, 228 Ill. 2d 502, 509 (2007) (State may forfeit claim that issue the defendant raises is forfeited if the State does not argue forfeiture on appeal). Thus, we will review these charges and, if necessary, modify the circuit court's order assessing fines, fees and costs without remanding the case pursuant to

Supreme Court Rule 615(b) (eff. Aug. 27, 1999). See *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 9 A defendant is entitled to credit of $5 for each day he is incarcerated, with that amount to be applied toward the fines levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2014). Here, defendant spent 308 days in custody, and accordingly has accumulated $1,540 worth of credit toward his eligible fees.

¶ 10 Before addressing the individual charges challenged by defendant, we note that presentence custody credit can be applied only to fines, not fees. That said, a "fine" is "punitive in nature" and is "a pecuniary punishment imposed as a part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.). *People v. Graves*, 235 Ill. 2d 244, 250 (2009), citing *People v. Jones*, 223 Ill 2d 569, 581 (2006), quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002). A "fee" is defined as "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 quotation marks omitted.). *Graves*, 235 Ill. 2d at 250, citing *Jones*, 223 Ill 2d at 582. The designation of a charge as a "fine" or "fee" by the legislature is not dispositive, rather "the most important factor is whether the charge seeks to compensate the state for any costs incurred in prosecuting the defendant." *Graves*, 235 Ill. 2d at 250-51.

¶ 11 Defendant argues that a portion of his presentence custody credit should be applied to the $2 State's Attorney and $2 Public Defender records automation charges because these assessments are fines, not fees, as they do not reimburse the State for costs incurred in prosecuting a particular defendant. In support of this argument defendant relies on *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, which found that these assessments did not

compensate the State for any costs associated in prosecuting a particular defendant and thus cannot be considered fees.

¶ 12 In setting forth his argument, defendant recognizes this court's numerous holdings that those charges are fees and thus not subject to offset by his presentencing custody credit. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115 (finding the $2 State's Attorney charge to be a fee because it compensatory in nature and not punitive); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding no need to distinguish between the two statutes authorizing the $2 State's Attorney and the $2 Public Defender charge, given their nearly identical language, and concluding that those charges are intended to reimburse those offices for expenses); see also *People v. 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. We agree with the analysis in *Warren*, *Bowen* and similar cases, finding that when a charge does not include a punitive aspect, it is a fee, not a fine. Therefore, the $2 State's Attorney and the $2 Public Defender records automation charges cannot be offset by defendant's presentence custody credit.

¶ 13 Defendant next contends that a portion of his presentence custody credit should be applied to the $10 fee for the County Jail Medical Costs Fund (730 ILCS 125/17 (West 2014)), because this assessment is a fine, not a fee, as it does not reimburse the State for costs incurred in prosecuting a particular defendant. In support of this argument, defendant relies on *People v. Larue*, 2014 IL App (4th) 120595, ¶ 57, which found that the $10 medical assessment was a fine.

¶ 14 Although we are mindful of the holding in *Larue*, we note that the statute that creates the $10 County Jail Medical Costs Fund fee expressly forbids the fee from being considered as a fine for purposes of a reduction by presentence custody credit. See 730 ILCS 125/17 (West 2014)

("The fee shall not be considered a part of the fine for purpose of any reduction in the fine."). We will not depart from this plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the expressed intent of our legislature. *People v. Marshall*, 242 Ill. 2d 285, 292-93 (2011). Accordingly, the $10 fee for the County Jail Medical Costs Fund cannot be offset by defendant's presentence custody credit.

¶ 15 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.