

2017 IL App (1st) 151345-U

No. 1-15-1345

Order filed: October 6, 2017

Sixth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 11 CR 7987
)	
JEFF BAILEY,)	Honorable
)	Dennis John Porter,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The fines, fees, and costs order and the mittimus are modified.

¶ 2 Following a jury trial, the defendant, Jeff Bailey, was convicted of two counts of attempt first degree murder with personal discharge of a firearm (720 ILCS 5/9-1(a)(1) (West 2008); 720 ILCS 5/8-4(a) (West 2008)) and was sentenced to concurrent terms of 26 years' imprisonment. On appeal, the defendant challenges certain fines and fees. He also contends that the mittimus

should be corrected because it does not reflect the offenses of which he was convicted. For the reasons below, we order modification of the fines, fees, and costs order and the mittimus.

¶ 3 The evidence at trial established that, on November 11, 2009, the defendant fired three or four shots at Shurney Brown and Veronica Wright, who were in the car next to his at a traffic light. Brown was hit by a bullet. The jury found the defendant guilty of attempt first degree murder of Brown and Wright and that he personally discharged a firearm. It also found him guilty of aggravated battery of Brown with a firearm. At sentencing, the court merged the aggravated battery conviction into the attempt first degree murder of Brown conviction. It sentenced the defendant to concurrent terms of 26 years' imprisonment and assessed him \$479 in fines, fees, and costs.

¶ 4 On appeal, the defendant contends that the assessed fines, fees, and costs should be reduced to \$70. He argues that (1) certain improperly imposed fees should be vacated, (2) he is entitled to presentence custody credit against certain fines and certain assessments are labeled as "fees" but are actually "fines," and (3) his mittimus does not accurately reflect the correct statutory citation and class of his convictions.

¶ 5 The defendant concedes that he did not raise these challenges to the assessed fines and fees in the trial court. His claims, therefore, are arguably forfeited. See *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010). He requests that we review his claims under the plain error doctrine. He also asserts that this issue may be raised for the first time on appeal and this court has the authority to modify the judgment order without remand. See *People v. Woodard*, 175 Ill. 2d 435, 444-48 (1997); Ill. Sup. Ct. R. 615(b). The State agrees, without discussion, that the defendant's claims are reviewable. The rules of waiver and forfeiture apply to the State. *People v. Williams*,

193 Ill. 2d 306, 347-48 (2000). Therefore, as the State does not argue forfeiture, we will address the merits of the defendant's claims. We review the propriety of court-ordered fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 6 The parties correctly agree that the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2014)), the \$5 court system fee (55 ILCS 5/5-1101(a) (West 2014)), and the \$25 miscellaneous fee “as ordered by the court” must be vacated. The electronic citation fee does not apply to felonies and is, therefore, inapplicable to the defendant's felony convictions for attempt first degree murder. See *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115. The court system fee is also inapplicable to the defendant's convictions, as it applies to violations of the Illinois Vehicle Code or similar county or municipal ordinances. *People v. Brown*, 388 Ill. App. 3d 104, 112 (2009). The miscellaneous fee must be vacated because the trial court failed to indicate any basis for the imposition of the fee. See *People v. Hunter*, 358 Ill. App. 3d 1085, 1094 (2005) (court may not assess charges unless authorized to do so by statute).

¶ 7 The defendant next asserts that he is entitled to a credit of \$5 for each day he spent in presentence custody to be applied against certain fines assessed against him. A defendant who is incarcerated on a bailable offense who does not supply bail, and against whom a fine is levied, is allowed a credit of \$5 for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014). This statute applies only to “fines” that were imposed after a conviction and does not apply to any other costs or “fees.” *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). A “fine” is “part of the punishment for a conviction,” whereas a “fee” is assessed 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 a statute labels a charge as a

“fee,” it may still be considered to be a “fine.” *Id.* at 599. The defendant spent 1,545 days in presentence custody and is, therefore, entitled to up to \$7,725 in presentence custody credit.

¶ 8 The defendant contends, and the State correctly concedes, that the defendant is entitled to \$50 in presentence custody credit for the following fines assessed against him that were not offset by his *per diem* credit: \$10 mental health court (55 ILCS 5/5-1101(d-5) (West 2014)), \$5 youth diversion/peer court (55 ILCS 5/5-1101(e) (West 2014)), \$5 drug court (55 ILCS 5/5-1101(f) (West 2014)), and \$30 children’s advocacy center (55 ILCS 5/5-1101(f-5) (West 2014)). See *People v. Graves*, 235 Ill. 2d 244, 250, 255 (2009) (finding that mental health court, youth diversion/peer court, and drug court assessments are fines); *People v. Jones*, 397 Ill. App. 3d 651, 660-661 (2009) (finding that children’s advocacy center assessment is a fine). Accordingly, these assessments should be offset by the defendant’s presentence custody credit.

¶ 9 Next, the defendant contends that the following fees are actually fines and should be offset by his presentence custody credit: the \$50 court system fee (55 ILCS 5/5-110(c)(1) (West 2014)), the \$15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)), the \$190 felony complaint filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the \$15 automation fee (705 ILCS 105/27.3a(1) (West 2014)), the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), the \$25 court services fee (55 ILCS 5/5-1103 (West 2014)), the \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2014)), the \$2 State’s Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)), and the \$10 probation and court services operations fee (705 ILCS 105/27.3a(1.1) (West 2014)). The State concedes that the \$15 state police operations fee and the \$50 court system fee are considered fines but disputes the defendant’s other contentions.

¶ 10 We agree with the parties that the \$15 state police operations fee and the \$50 court system fee are considered to be fines and should be offset by presentence custody credit. *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (concluding that the court systems fee is actually a fine); *People v. Milsap*, 2012 IL App (4th) 110668, ¶ 31 (“the State Police operations assistance fee is also a fine”). Accordingly, both assessments should be offset by the defendant’s presentence custody credit.

¶ 11 The \$2 public defender records automation fee and the \$2 State’s Attorney records automation fee are not fines. “[T]he bulk of legal authority has concluded that both assessments are fees rather than fines because they are designed to compensate those organizations for the expenses they incur in updating their automated record-keeping systems while prosecuting and defending criminal defendants.” *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (consolidating cases); see contra *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (finding the assessments are fines, not fees). Accordingly, the defendant is not entitled to presentence custody credit toward these assessments.

¶ 12 Similarly, the defendant is not entitled to presentence custody credit against the \$190 felony complaint filing fee, the \$15 automation fee, the \$15 document storage fee, and the \$25 court services fee. This court has already considered challenges to these assessments and found that they are fees as they “are compensatory and a collateral consequence of [the] defendant’s conviction.” *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006). These charges represent part of the costs incurred for prosecuting a defendant and are, therefore, not fines subject to offsetting presentence custody credit. See *id.*; *People v. Graves*, 235 Ill. 2d 244, 250 (2009).

¶ 13 The defendant also is not entitled to offset against the \$10 probation and court services operations fee. In this case, the probation department prepared a pretrial investigation report for use during the defendant's sentencing hearing. Thus, this charge is compensatory because it reimburses the State for costs incurred as a result of prosecuting the defendant and it should not be offset by his presentence custody credit. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 37 (finding that probation and court services operations charge constitutes a fee).

¶ 14 As a final point, the defendant contends, and the State correctly concedes, that the mittimus should be amended to accurately reflect his convictions. The jury found the defendant guilty of two counts of Class X attempt murder while personally discharging a firearm pursuant to 720 ILCS 5/8-4(a), (c)(1)(C) and 720 ILCS 5/9-1(a)(1). The mittimus provides that the defendant was convicted of two counts of attempt murder pursuant to 720 ILCS 5/9-1(a)(1), but omits the statutory citations to attempt (720 ILCS 5/8-4(a), (c)(1)(C)), and incorrectly lists the class of the offenses as "M." Pursuant to our authority under Illinois Supreme Court Rule 615(b), we order correction of the defendant's mittimus to add the statutory citations for attempt (720 ILCS 5/8-4(a), (c)(1)(C)) and to reflect that the convictions were for Class X felonies.

¶ 15 For the reasons set forth above, we vacate the \$5 electronic citation fee, the \$5 court system fee, and the \$25 miscellaneous assessment and order that the \$10 mental health court, \$5 youth diversion/peer court, \$5 drug court, \$30 children's advocacy center, \$50 court system, and \$15 state police operations assessments be offset by presentence custody credit. We also order that the mittimus be corrected to reflect that the defendant was convicted of two counts of attempt first degree murder, a Class X felony, with appropriate citations to the attempt statute.

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We direct the clerk of the circuit court to modify the fines, fees, and costs order and the mittimus accordingly. The judgment of the circuit court is affirmed in all other respects.

¶ 16 Affirmed as modified.