

No. 1-15-1353

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. 14 CR 3211
)
 RICHARD TOWNSEL,) Honorable
) William G. Lacy,
 Defendant-Appellant.) Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justice Pierce concurred in the judgment.
Presiding Justice Hyman concurred in part and dissented in part.

ORDER

¶ 1 *Held:* The Public Defender charge and the records automation charges for the Public Defender and State’s Attorney are fees, not fines.

¶ 2 Following a 2015 bench trial, defendant Richard Townsel was convicted of delivery of a controlled substance (less than one gram of heroin) and possession of a controlled substance (less than one gram of heroin) with intent to deliver and was sentenced to concurrent

prison terms of seven years with fines and fees. On appeal, defendant challenges one of his fees and seeks credit against his fines for presentencing custody. He also contends that the mittimus must be corrected to properly reflect the names of his offenses. We correct the mittimus and the order assessing fines and fees, and otherwise affirm the judgment.

¶ 3 Before addressing the merits, we note that defendant did not raise these issues in the trial court and has thus forfeited them. However, the State does not argue forfeiture (indeed, the parties agree that we may review these claims as plain error) and thus has forfeited a forfeiture challenge. *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 28. While it is preferable for the trial court to resolve such issues, we shall address them.

¶ 4 First, we agree with the parties that the \$5 electronic citation fee must be vacated because defendant's offenses are felonies and the fee applies only in traffic, misdemeanor, municipal ordinance and conservation cases. 705 ILCS 105/27.3e (West 2014). We so order.

¶ 5 Defendant's 432 days of presentencing custody entitle him to up to \$2160 credit against his fines. 725 ILCS 5/110-14(a) (West 2014) (\$5 credit against fines for each day of presentencing custody). The parties correctly agree that defendant is due credit on his \$1000 controlled substance fine (720 ILCS 570/411.2(a)(3) (West 2014)) and on \$100 of his charges that are not fees but fines: \$50 for the court system, \$30 for the Children's Advocacy Center, \$15 for State Police operations, and \$5 for drug court. 55 ILCS 5/5-1101(c), (f), (f-5); 705 ILCS 105/27.3a(1.5) (West 2014). We so order.

¶ 6 However, the parties dispute whether certain charges are fines or fees. We have held that the records automation charges of \$2 each for the Public Defender and State's Attorney (55 ILCS 5/3-4012, 4-2002.1(c) (West 2014)) are fees, and the Public Defender charge is a fee for a defendant who was represented by the Public Defender. *People v. Brown*, 2017 IL App (1st)

150146, ¶ 38; *People v. Murphy*, 2017 IL App (1st) 142092, ¶¶ 19-21; but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56. As defendant was represented by the Public Defender, we see no reason not to follow *Brown* and *Murphy*. We have also held that the charges of \$15 each for the circuit court clerk for automation and document storage (705 ILCS 105/27.3a(1), 27.3c (West 2014)) are fees. *Brown*, ¶ 39.

¶ 7 Lastly, the parties agree that the mittimus should be corrected to reflect that defendant was convicted of delivery of a controlled substance and possession of a controlled substance with intent to deliver, rather than two counts of "OTHER AMT NARCOTIC SCHED I&II" as the mittimus states. We agree and so order. See *People v. Wade*, 2013 IL App (1st) 112547, ¶ 40.

¶ 8 In sum, pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to correct the (1) mittimus to reflect convictions for delivery of a controlled substance and possession of a controlled substance with intent to deliver, and (2) fines and fees order to reflect (a) vacatur of the \$5 electronic citation fee, and (b) \$1100 credit. We affirm the judgment of the circuit court in all other respects.

¶ 9 Affirmed in part, vacated in part, mittimus and order corrected.

¶ 10 PRESIDING JUSTICE HYMAN, concurring in part and dissenting in part:

¶ 11 I agree with my colleagues that the charges for the public defender, and automation and document storage, are fees. I disagree with the holding as to the two “records automation” charges (for the Public Defender and State’s Attorney). As I previously explained in *People v. Camacho*, 2016 IL App (1st) 140604, the language of the relevant statutes demonstrates that these charges are assessed to fund the technology of those two offices, not to compensate for the costs of prosecuting a particular defendant. *Id.* ¶ 50. So, these charges are fines, not fees, and Townsel is entitled to presentence credit against them.