

2017 IL App (1st) 151380-U

No. 1-15-1380

Order filed August 4, 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. 13 CR 7471
)	
WILLIE HOPSON,)	Honorable
)	Lawrence Edward Flood,
Defendant-Appellant.)	Judge, presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

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

¶ 2 Following a bench trial, defendant Willie Hopson was convicted of aggravated battery (720 ILCS 5/12-3.05(e)(1) (West 2012)), armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a) (West 2012)), and unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a)(West 2012)). On appeal, defendant challenges certain assessed fines and fees. We affirm but modify the fines, fees, and costs order.

¶ 3 The evidence at trial established that, on March 13, 2013, defendant approached Antiwuan Williams and pointed a gun at him. Williams “dove” on defendant to keep him from shooting, the gun went off, and Williams suffered superficial gunshot wounds to the head. Defendant had prior convictions for possession of a controlled substance and UUWF. Defendant denied shooting a gun at Williams.

¶ 4 The trial court found defendant guilty of aggravated battery, AHC, and UUWF. At sentencing, the trial court merged the UUWF count into the aggravated battery count and sentenced defendant to nine years in prison on both the aggravated battery and AHC counts, to be served concurrently. The trial court also orally imposed \$399 in fines and fees.

¶ 5 On appeal, defendant contends that he is entitled to presentence custody credit to be applied against certain charges that are labeled as “fees” but are considered “fines.” Alternatively, defendant contends that his trial counsel was ineffective for failing to object at trial to the erroneously imposed fines, fees, and costs.

¶ 6 Defendant concedes that he did not raise his challenge to the assessed fines and fees in the trial court but urges us to review it under the plain error doctrine. See *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The State agrees with defendant in that, even though he forfeited his claim by failing to raise it in the trial court, the plain error doctrine permits the reviewing court to review the issue under the plain error doctrine.

¶ 7 We disagree that defendant’s challenge is reviewable under plain error. *People v. Grigorov*, 2017 IL App (1st) 143274, ¶ 15; *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9. Nevertheless, because the State does not argue that defendant has forfeited review of his challenge to the assessed fines and fees, it has forfeited any forfeiture argument. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State).

Therefore, even though defendant did not raise his challenge to the assessed fines and fees in the trial court, we will review defendant's claims. We review the propriety of court-ordered fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 8 Under section 110-14(a) of the Code of Criminal Procedure, defendant is entitled to a credit of \$5 toward his fines for each day he spent in presentence custody. 725 ILCS 5/110-14(a) (West 2012). The statute applies only to “fines” that were imposed after a conviction and not to any other costs or “fees.” *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). A “fine” is considered to be “part of the punishment for a conviction,” and 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). If the statute labels a charge a “fee,” it still may be considered a “fine.” *Jones*, 223 Ill. 2d at 599. To determine whether a charge is a fine or a fee, the label is “strong evidence but it cannot overcome the actual attributes of the charge.” *Id.* Rather, our supreme court has held that “the 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). The fines, fees, and costs order recites that defendant was in presentence custody for 746 days. Therefore, he is entitled to \$3,730 in presentence custody credit.

¶ 9 Defendant contends that the following fees are considered fines and should be offset by his presentence custody credit: the \$15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2012)), the \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2012)) the \$2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2012)), the \$190 “Felony Complaint Filed (Clerk)” fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), the \$15 automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2012)), the \$15 document storage fee (705

ILCS 105/27.3c(a) (West 2012)), the \$25 court services (sheriff) fee (55 ILCS 5/5-1103) (West 2012)), and the \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2012)).

¶ 10 The State concedes that two of these charges, the \$15 State Police operations fee and the \$50 court system fee, are considered fines and, therefore, should be offset by defendant's presentence custody credit. We agree that the \$15 State Police operations fee and the \$50 court system fee are considered "fines." These assessments do not reimburse the State for costs incurred to prosecute defendant. *People v. Milsap*, 2012 IL App (4th) 110668, ¶ 31 ("the State Police Operations Assistance fee does not reimburse the State for costs incurred in defendant's prosecution"); *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (concluding that the court systems charge is a fine). Accordingly, defendant is entitled to receive presentence custody credit against these two assessments.

¶ 11 Defendant next argues that the \$2 public defender records automation fee and the \$2 State's Attorney records automation fee are considered "fines" subject to offset by his presentence custody credit. Defendant asserts that these assessments do not compensate the State for the costs incurred to prosecute defendant. The State maintains that these assessments are "fees."

¶ 12 In *People v. Brown*, 2017 IL App (1st) 142877, ¶¶ 76, 78, this court found that the \$2 public defender's records automation and the \$2 State's Attorney records automation charges are fees. In doing so, it acknowledged the decision in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, which concluded that these assessments are "fines." However, the court in *Brown* noted that, other than the name of the recipient, the fees are "identical" and stated that it would "follow the weight of authority that holds that the State's Attorney records automation fee is indeed a fee." *Brown*, 2017 IL App (1st) 142877, ¶¶ 76, 78. Similarly, while we acknowledge

the decision in *Camacho*, we follow *Brown* and conclude that these assessments are fees and not fines. See *id.* Accordingly, defendant is not entitled to presentence custody credit toward the \$2 State's Attorney records automation fee nor the \$2 public defender records automation fee.

¶ 13 Defendant next argues that the \$15 document storage fee, the \$15 automation fee, and the \$190 felony complaint filing are considered “fines.” He asserts that these assessments do not reimburse the State for the costs incurred to prosecute defendant. He also argues that the automation fee “finances a component of the court system,” that the document storage fee was imposed to “defray a general cost of the court system,” and that the \$190 felony complaint filing fee is an “arbitrary figure” imposed to finance the “clerk’s mission as a whole.” The State maintains that these assessments are fees and cites *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), where we concluded that these assessments are fees and not fines. We agree with the State. In *Tolliver*, this court concluded that the automation, document storage, and felony complaint filing charges are fees, as they “are compensatory and a collateral consequence of defendant’s conviction.” *Tolliver*, 363 Ill. App. 3d at 97; see also *Brown*, 2017 IL App (1st) 142877, ¶ 81.

¶ 14 Defendant next argues that the \$25 court services (sheriff) fee is a fine because the sheriff’s “security guards” provide a “neutral service” benefiting everyone at the courthouse and the assessment does not compensate the State for the costs incurred to prosecute defendant. We agree with the State that this assessment is a fee. Court security services were necessarily used to conduct a trial and to prosecute defendant. They were a “collateral consequence” of his conviction. *Tolliver*, 363 Ill. App. 3d at 97 (concluding that the sheriff’s court services charge is a fee). Thus, we conclude that the \$25 court services (sheriff’s) assessment is a fee and is not

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subject to presentence custody credit. See *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (concluding that the court services (sheriff's) assessment is a fee).

¶ 15 In the fines, fees, and costs order, an initial calculation of \$449 was crossed out and replaced with the total of \$399. Defendant asserts that we should remand for the trial court to clarify the total amount due. From our review, it appears that the initial total that defendant owed, prior to any credit being applied, was \$449. However, defendant was assessed \$50 in fines subject to presentence custody credit (\$10 mental health court, \$5 youth diversion/peer court, \$5 drug court, and \$30 Children's Advocacy Center). Applying this credit by subtracting \$50 from the initial total, the resulting total amount due from defendant becomes \$399, as reflected on the order. Therefore, there is no need to remand to clarify the total amount due.

¶ 16 For the reasons explained above, defendant is entitled to additional presentence custody credit toward the \$15 State Police operations and \$50 court system assessments. We order the clerk of the circuit court to modify the fines, fees, and costs order accordingly. The judgment of the circuit court is affirmed in all other respects.

¶ 17 Affirmed as modified.