

2017 IL App (1st) 151512-U
No. 1-15-1512

Order filed December 11, 2017

FIRST 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

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10 CR 04242
)	
WILLIAM CHRISTIE,)	Honorable
)	Angela M. Petrone,
Defendant-Appellee.)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held:* A portion of the restitution order must be vacated because, under the facts of this case, a police department was not a “victim” within the meaning of section 5-5-6 of the Unified Code of Corrections (730 ILCS 5/5-5-6 (West 2014)). The fines and fees order must be corrected to show the proper number of days of presentence custody credit, the vacation of certain assessments, and the offset of certain assessments.

¶ 2 Following a bench trial, defendant William Christie was found guilty of felony theft and sentenced to two years of probation. On appeal, defendant contends that a portion of the restitution order must be vacated because, under the facts of this case, the Niles Police Department was not a “victim” within the meaning of section 5-5-6 of the Unified Code of Corrections (the Code) (730 ILCS 5/5-5-6 (West 2014)). Defendant also contends that he is entitled an additional day of presentence custody credit and contests the imposition of certain fines and fees. We affirm in part, vacate in part, and correct the fines and fees order.

¶ 3 The evidence at defendant’s bench trial established that defendant, a member of the Niles Police Department, was the “reporting officer” on the death investigation of Larry Pollack. Jean Nieminski, Pollack’s sister, testified that on November 14, 2009 defendant offered to clean out Pollack’s room at a YMCA. Nieminski, who lived in California, accepted. She asked defendant to tell her what he found, but did not tell him that he could take any money found in the room. On November 19, 2009, Nieminski received a phone call from defendant stating that he found \$300. She offered to split the money with defendant but he declined. Nieminski later received a package from defendant containing, in pertinent part, approximately \$274.¹

¶ 4 Joseph O’Sullivan and Dennis McEnerney, who were Niles Police Officers in November 2009, testified that YMCA employees contacted the department because defendant was adamant about getting into Pollack’s room. They then entered the room, photographed its contents, counted the currency and loose change therein, and set up a motion activated video camera. The officers also left approximately \$355 in “bait money” in the room. Ultimately, the room

¹ Nieminski later testified that the amount might have been \$294, but she was certain that it was less than \$300.

contained approximately \$2,162.15.² McEnerney then relocated to another room and observed defendant enter Pollack's room and leave two hours later. When McEnerney reentered Pollack's room, the money was gone. Defendant was arrested after he did not send the full amount he removed from the room to Nieminski.

¶ 5 Defendant was found guilty of felony theft and sentenced to two years of probation. Defendant was also ordered to pay restitution of \$1,512.15 to Nieminski and \$355 to the Niles Police Department. Defendant was credited with 21 days of presentence custody credit and assessed fines, fees and costs totaling \$709.

¶ 6 On appeal, defendant challenges a portion of the restitution order and the imposition of certain fines and fees. Defendant acknowledges that he failed to preserve these issues for appeal because he did not make an objection before the trial court or raise these issues in a postsentencing motion. However, defendant requests that this court review his claims pursuant to the plain error doctrine. Defendant also asserts that this court may correct the fines and fees order pursuant to this court's authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999).

¶ 7 It is well settled that a defendant forfeits a sentencing issue that he fails to raise in the trial court through both a contemporaneous objection and a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). We disagree that this court can reach the merits of defendant's claims under Rule 615(b). See *People v. Grigorov*, 2017 IL App (1st) 143274, ¶¶ 13-14. Moreover, the plain error doctrine is not "an appropriate vehicle for review in cases where the complained-of error does not stem from failure to provide a fair process for determining the imposition of the fine or fee at issue but [is] a mere clerical mistake." See *People v. Griffin*, 2017

² O'Sullivan testified that the total was "about \$2,161 and change."

IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017) (quoting Ill. S. Ct. R. 615(a) (“ ‘Plain errors or defects *affecting substantial rights* may be noticed although they were not brought to the attention of the trial court.’ ” (Emphasis in original.)).

¶ 8 However, the rules of forfeiture and waiver also apply to the State, and where the State fails to argue that defendant has forfeited an issue, it waives the forfeiture. *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). Here, the State has not argued that defendant’s claims are forfeited, and thus, we will address the merits of defendant’s claims on appeal.

¶ 9 We further note that although defendant’s request for presentence credit is raised for the first time on appeal, section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2014)), permits this court to award a defendant presentence custody credit upon “application of the defendant.” Claims for presentence custody credit under section 110-14 “may be raised at any time and at any stage of court proceedings, even on appeal in a postconviction petition.” *People v. Caballero*, 228 Ill. 2d 79, 88 (2008) (holding that the defendant was entitled to \$5 per day for the 118 days he spent in custody before sentencing). Granting credit is a simple ministerial act that promotes judicial economy and ends further proceedings on the issue. *People v. Woodard*, 175 Ill. 2d 435, 456-57 (1997).

¶ 10 Defendant first contends, and the State concedes, that under the facts of this case the Niles Police Department is not a “victim” as defined by statute, and, therefore, that portion of the restitution order must be vacated. We agree.

¶ 11 The restitution statute authorizes courts to order restitution when a person has “received any injury to his or her person or damage to his or her real or personal property as a result of the

criminal act of the defendant.” See 730 ILCS 5/5-5-6 (West 2014). Section 5-5-6 of the Code states that when “fixing” the restitution amount, “the court shall assess the actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge and any other victims who may have suffered out-of-pocket expenses, losses, damages, and injuries proximately caused by the same criminal conduct of the defendant * * *.” 730 ILCS 5/5-5-6(b) (West 2014). Thus, a “victim” under section 5-5-6 is someone who has had property taken or suffered property damage or personal injury. *People v. Danenberger*, 364 Ill. App. 3d 936, 943 (2006).

¶ 12 This court has previously held that “a police department or government agency is not considered a ‘victim’ within the meaning of the restitution statute [citation].” *People v. Derengoski*, 247 Ill. App. 3d 751, 754 (1993) (collecting cases); see also *People v. Ford*, 2016 IL App (3d) 130650, ¶ 27 (law enforcement agencies are not entitled to restitution for funds used to purchase illegal drugs or stolen goods from defendants, expenses incurred in arresting a defendant and expenses incurred in investigating a false criminal complaint). The “rationale of these opinions is that a law enforcement agency ought not be compensated for the public money that it spends in performing its basic function of investigating and solving crimes.” *Danenberger*, 364 Ill. App. 3d at 944. The investigation of an offense does not automatically render a law enforcement agency a “victim” of that offense. *Id.* See also *Ford*, 2016 IL App (3d) 130650, ¶ 30 (affirming a restitution order when the defendant’s “reckless conduct” damaged a police van and caused out-of-pocket expenses). “[W]ere the rule otherwise, police departments would receive restitution in almost every criminal case, thus being paid twice—once by the

taxpayers and once by the offender—for performing their basic function.” *Danenberger*, 364 Ill. App. 3d at 944.

¶ 13 In the case at bar, the \$355 at issue was used to further the Niles Police Department’s investigation of defendant. The restitution ordered in this case was essentially reimbursing the department for the costs of investigating a crime. Therefore, the department is not a “victim” as contemplated by section 5-5-6, and that portion of the restitution order must be vacated. See *Danenberger*, 364 Ill. App. 3d at 944 (“a law enforcement agency ought not be compensated for the public money that it spends in performing its basic function of investigating and solving crimes”).

¶ 14 Defendant next contests the imposition of certain fines and fees. The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 15 Defendant first contends, and the State concedes, that his fines and fees order must be corrected to reflect that he spent 22 days in presentence custody credit. We agree that defendant is entitled to 22 days of presentence custody credit when he was arrested and posted bond, on February 4, 2010, and was in custody from March 16, 2015 to April 6, 2015. Defendant is therefore entitled to \$110 of presentence custody credit. 725 ILCS 5/110-14(a) (West 2014).

¶ 16 Defendant next contends, and the State concedes, that the \$5 Electronic Citation fee must be vacated because defendant’s offense is a felony but the fee applies only in traffic, misdemeanor, municipal ordinance and conservation cases. 705 ILCS 105/27.3e (West 2014). We agree, and order that \$5 Electronic Citation fee be vacated.

¶ 17 Defendant further contends, and the State concedes, that the \$20 probable cause hearing fee must be vacated because he was charged by indictment and a probable cause hearing was not

held. Section 4-2002.1(a) of the Counties Code provides that the State shall be entitled to a \$20 fee “[f]or preliminary examinations for each defendant held to bail or recognizance.” 55 ILCS 5/4-2002.1(a) (West 2014). When a probable cause hearing was not held, a defendant cannot be assessed a “preliminary examination” fee. *People v. Smith*, 236 Ill. 2d 162, 174 (2010). Therefore, we vacate the \$20 probable cause hearing fee.

¶ 18 The parties finally agree that the \$50 Court System Fee (55 ILCS 5/5-1101(c)(1) (West 2014)), and the \$15 State Police Operations Fee (705 ILCS 105/27.3a(1.5) (West 2014)), should be offset by defendant’s presentence custody credit. See *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21 (awarding defendant credit for court system fee imposed under section 5-1101(c) of Counties Code because “the assessment is not intended or geared to compensate the State (or the county) for the cost of prosecuting a defendant”); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (“we find that the State Police Operations Assistance fee does not reimburse the State for costs incurred in defendant’s prosecution”). We so order.

¶ 19 For the foregoing reasons, we vacate the portion of the restitution order ordering defendant to pay \$355 to the Niles Police Department. We further direct the clerk of the circuit court to correct the fines and fees order to show the vacation of the \$5 Electronic Citation fee and the \$20 probable cause hearing fee, and the offset of the \$50 Court System Fee and the \$15 State Police Operations Fee by defendant’s presentence custody credit for a new total due of \$574. We affirm the judgment of the circuit court of Cook County in all other aspects.

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