2017 IL App (1st) 152256-U
Order filed: October 20, 2017

FIFTH DIVISION

No. 1-15-2256

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 15567 (02)
	)	
MARDELLACE PINCKNEY,	)	Honorable
	)	Raymond Myles,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 ***Held***: We vacated two improperly-assessed fees finding that two fees are actually fines which are subject to presentence incarceration credit; we directed the clerk of the circuit court of Cook County to modify defendant's fines and fees order.

¶ 2 Following a bench trial, defendant-appellant, Mardellace Pinckney, was convicted of delivery of a controlled substance (720 ILCS 570/401(d) (West 2014)), and sentenced to four years' imprisonment. The trial court also assessed various fines and fees totaling $1,019. On appeal, defendant argues that two assessments were improperly imposed, and that several fees are actually fines which are subject to an offset by a presentence incarceration credit. We vacate

two improperly-assessed fees; find that two fees are actually fines subject to an offset by a presentence incarceration credit; and we modify defendant's fines and fees order.

¶ 3 Defendant and a codefendant were charged with delivery of a controlled substance stemming from a controlled narcotics purchase by an undercover Chicago police officer. At trial, four Chicago police officers testified and established that, on August 14, 2014, defendant, along with codefendant, sold two small bags of suspect heroin to the undercover officer in exchange for $20 of prerecorded funds. The parties stipulated that an analysis of one of those bags received by the undercover officer tested positive for 0.4 grams of heroin.

¶ 4 The trial court found defendant guilty of one count of delivery of a controlled substance, sentenced him to four years' imprisonment, and assessed fines and fees in the amount of $1,019. Defendant appeals.

¶ 5 On appeal, defendant argues that two fees were improperly assessed and should be vacated, and that seven fees are actually fines, subject to a presentence incarceration credit. He also seeks credit for the 309 days he spent in presentence custody.

¶ 6 As an initial matter, defendant concedes that he did not raise in the trial court the issue of the improper imposition of fines and fees. He argues that we may review this issue under Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967), or under the plain-error doctrine. The State does not argue that the issue is forfeited but notes that "this Court has the authority to order the clerk of the circuit court to correct the mittimus at any time," and cites Rule 615(b)(1), and to our decisions in *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995) and *People v. Quintana*, 332 Ill. App. 3d 96, 110 (2002).

¶ 7 We reject defendant's argument that we may address his challenge to the fines and fees order under the plain-error doctrine or under Rule 615. *People v. Grigorov*, 2017 IL App (1st)

143274, ¶¶ 13-15; *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9; *contra People v. Cox*, 2017 IL App (1st) 151536, ¶ 102 (holding that the improper imposition of fines and fees affects "substantial rights" and, therefore, may be reviewed under the second prong of the plain-error doctrine).

¶ 8 Additionally, we reject defendant's argument that we may address his challenge to the fines and fees order under *People v. Lewis*, 234 Ill. 2d 32 (2009). In *Lewis*, the trial court failed to provide a fair process for determining fines and fees. *Id.* at 48. Here, defendant makes no such claim. See *Grigorov*, 2017 IL App (1st) 143274, ¶ 15 (distinguishing *Lewis* on this point).

¶ 9 However, because the State fails to argue against defendant's forfeiture of the issue, we will address the merits of defendant's challenge to his fines and fees order. See *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46 ("rules of waiver also apply to the State, and where *** the State fails to argue that defendant has forfeited the issue, it has waived the forfeiture"). The propriety of the fines and fees imposed by the trial court is reviewed *de novo*. *People v. Green*, 2016 IL App (1st) 134011, ¶ 44.

¶ 10 Defendant argues, and the State correctly concedes, that the $5 electronic citation fee was improperly assessed and should be vacated. This fee is only imposed on a defendant "in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision." 705 ILCS 105/27.3e (West 2014). Here, defendant was convicted of delivery of a controlled substance, an offense not listed in that statute. Accordingly, we vacate the $5 electronic citation fee. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115.

¶ 11 Defendant next argues, and again the State correctly concedes, that the $2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2014)), should be vacated because he was not represented by the office of the Cook County Public Defender, but by private counsel.

Thus, the imposition of this fee was improper. See *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 36 (vacating $2 Public Defender records automation fee where the defendant was represented by private counsel and the State conceded that this fee was improperly assessed).

¶ 12 Defendant next contends that seven of the fees imposed against him are actually fines subject to a presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) ("the credit for presentence incarceration can only reduce fines, not fees").

¶ 13 Defendant argues, and the State correctly concedes that, the $50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2014)), and the $15 State Police operations assessment (705 ILCS 105/27.3a(1.5) (West 2014)), are fines subject to a presentence incarceration credit. We agree. See *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (holding that "the $50 Court System fee imposed *** pursuant to section 5-1101(c) is a fine for which defendant can receive credit for the *** days he spent in presentence custody"); *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 141 ("Since the state operations charge under section 27.3a(1.5) is a fine, defendant is entitled to presentence credit toward it.").

¶ 14 Defendant next contends that the $190 felony complaint fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the $15 clerk automation fee (705 ILCS 105/27.3a(1) (West 2014)), the $15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), and the $25 court services fee (55 ILCS 5/5-1103 (West 2014)), are fines subject to presentence incarceration credit. This court has already considered challenges to these assessments and has determined that they are fees and, therefore, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42 (relying on *Tolliver* and finding the $190 felony complaint fee to be a fee); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding that the clerk automation fee and the document storage

fee are fees not subject to an offset by a presentence incarceration credit); *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (relying on *Tolliver* and finding that the $25 court services assessment is a fee not subject to an offset by a presentence incarceration credit).

¶ 15 Defendant argues that *Tolliver* was decided before our supreme court's decision in *People v. Graves*, 235 Ill. 2d 244 (2009), and that its analysis is contrary to that of our supreme court and is, thus, no longer persuasive. We disagree. The court in *Graves* held that, for an assessment to be characterized as a fee, it must reimburse the State for some costs incurred in prosecuting the particular defendant. *Id.* at 250. This court employed the same reasoning in *Tolliver*, that the charges are fees and represent a portion of the cost incurred in prosecuting a defendant. See *Tolliver*, 363 Ill. App. 3d at 97 ("We find that all of these charges are compensatory and a collateral consequence of defendant's conviction, and as such, are considered 'fees' rather than 'fines.' "); see also *Brown*, 2017 IL App (1st) 142877, ¶ 81. We, therefore, hold that these charges are fees not subject to an offset by a presentence incarceration credit.

¶ 16 Next, defendant argues the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)), is a fine because it does not compensate the State for prosecuting defendant.

¶ 17 This court has previously found the $2 State's Attorney records automation fee is not a fine and, thus, is not subject to presentence custody credit. See, generally, *Brown*, 2017 IL App (1st) 142877, ¶¶ 75-76 (finding that the State's Attorney records automation assessment to be a fee); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding that the State's Attorney records automation assessment is a fee meant to reimburse the State for expenses related to automated record-keeping systems); *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30 (finding

the State's Attorney records automation assessment is a fee which serves to reimburse the State's Attorney for costs associated with automated record-keeping); *People v. Reed*, 2016 IL App (1st) 140498, ¶ 16 (agreeing with *Bowen* and *Rogers* that the State's Attorney records automation assessment is a fee). Although we recognize that *People v. Camacho*, 2016 IL App (1st) 140604, found this assessment to be a fine (*id.* ¶¶ 47-56), we follow *Brown*, *Bowen*, *Rogers*, and *Reed* and determine the State's Attorney records automation assessment is a fee which is not subject to an offset by a presentence custody credit.

¶ 18 Defendant next requests credit for the 309 days he spent in presentence incarceration. A defendant incarcerated on a bailable offense, who does not post bail, and against whom a fine is imposed, is allowed a $5 credit for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014). Again, defendant did not raise this issue in the trial court. However, claims for statutory monetary credit pursuant to section 110-114 of the Code of Criminal Procedure of 1963 may be raised at any time. 725 ILCS 5/110-14 (West 2012). We, therefore, will address this issue. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008); *People v. Brown*, 2017 IL App (1st) 150203, ¶¶ 36-38.

¶ 19 Here, defendant spent 309 days in presentence custody and is, therefore, entitled to a $1,545 credit to offset the imposed fines. Applying this credit to his fines, which include the $10 Mental Health Court fine; the $30 Children's Advocacy Center fine; the $500 controlled substance fine; the recharacterized $50 court system fee; and $15 State Police operations assessment, defendant's new total should reflect a balance of $407.

¶ 20 For the reasons set forth above, we vacate the $5 electronic citation fee and the $2 Public Defender records automation fee, and find that the $50 court system fee and the $15 State Police operations assessment are fines subject to a presentence incarceration credit. However, the $190

felony complaint fee; the $15 clerk automation fee; the $15 document storage fee; and the $25 court services fee are fees not subject to a presentence incarceration credit. Defendant's fines and fees order should reflect a new total of $407.[1]

¶ 21 Pursuant to Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967), we direct the clerk of the circuit court to modify the fines and fees order accordingly. We affirm defendant's conviction and sentence in all other respects.

¶ 22 Affirmed; fines and fees order modified.

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[1] The $500 controlled substance assessment (720 ILCS 570/411.2(a) (West 2014)), is properly listed as a fine subject to offset by presentence incarceration credit on defendant's fines and fees order. Defendant did not argue in his opening brief for a presentence incarceration credit to apply to this fine, but the State conceded that it is subject to an offset. We agree this assessment was properly labeled as a fine subject to an offset by a presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 587-92 (2006).