2017 IL App (1st) 152710-U

No. 1-15-2710

Order filed November 6, 2017

FIRST DIVISION

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 17450
	)	
RODERICK SMITH,	)	Honorable
	)	Earl B. Hoffenberg,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's 10-year sentence where the trial court considered his rehabilitative potential and other mitigating factors, and did not consider improper factors in aggravation. Fines and fees order corrected.

¶ 2 Following a bench trial, defendant Roderick Smith was convicted of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2012)) and sentenced to 10 years' imprisonment. On appeal, he argues the trial court abused its discretion where it failed to adequately consider his rehabilitative potential and other mitigating evidence and improperly

considered other factors in imposing a 10-year prison sentence. He further contends the fines and fees order should be corrected. We affirm defendant's sentence because the trial court adequately considered the appropriate factors and correct the fines and fees order.

¶ 3 Defendant was charged by indictment with two counts of attempted first-degree murder, four counts of aggravated discharge of a firearm, one count of aggravated assault, two counts of aggravated unlawful use of a weapon, and two counts of unlawful use of a weapon stemming from acts occurring on August 10, 2013, in Chicago. We briefly recite the evidence presented at trial as defendant does not challenge the sufficiency of the evidence supporting his conviction.

¶ 4 George Cummings testified that he was inside of a van supervising the delivery of newspapers with passengers Kyle Lee, Devon Terry, and Durrell Jones. When the van was attempting to make a left turn, Cummings observed a group of seven or eight young black men cross the street in front of the van. Some members of the group ran to the van "yelling something and making gestures at the door" and they "attempted to open the passenger side and the driver's side front doors." Cummings drove away from the men and, while waiting to make a turn into an alley, heard five or six gunshots. Cummings heard bullets hit the van and quickly drove away. While driving away, he observed in his rearview mirror a young black man holding a gun.

¶ 5 Lawrence LeBlanc testified that he owned a nearby pawnshop and defendant was one of his customers. While walking into his shop, LeBlanc heard two gunshots. He observed defendant, in the middle of the street, firing at a van. Defendant was "up and down with [his] movements, shooting to the point where there was no more bullets left in the gun. But he still kept going." LeBlanc, from across the street, heard clicks from the gun. He kept a record from a transaction with defendant, which included a photocopy of defendant's photo identification and home address, and gave the police this documentation when they arrived.

¶ 6 Officer Matthew Blomstrand testified that he received defendant's record from LeBlanc and was able to determine defendant's address. Blomstrand went to defendant's address, was given permission to search the residence, and was directed by defendant to a gun in his bedroom. Blomstrand placed defendant in custody and transported him to the police station.

¶ 7 Detective Demetrius Kolliopoulos interviewed defendant, who stated that he and the group of people he was with were members of Mafia Insane Vice Lords street gang. Defendant recognized three passengers of the van as members of the rival Four Corner Hustlers street gang. Defendant removed from his pocket a gun, which belonged to his father, and fired eight rounds at the van because the passengers were members of a gang that had attacked him in the past. Defendant then admitted, in a written statement, that he had "anger issues" and no one in the van had any weapons.

¶ 8 Defendant testified that he observed passengers in Cummings's van "throwing up gang signs," which, based on prior experiences, made him scared. He then fired at the van because he was "tired of these individuals always threatening me." Defendant testified that he was previously threatened by members of the Four Corner Hustlers gang and had been shot at in the past. He denied that he was a member of any gang.

¶ 9 The trial court found defendant guilty of aggravated discharge of a firearm and other weapons-related counts but not guilty of attempted murder. The court rejected defendant's claim of self-defense but also found that the State failed to prove specific intent to kill Cummings beyond a reasonable doubt. The court stated, "it was a serious situation, and I treat it seriously. And, of course, any sentencing that I will consider on the aggravated discharge of a firearm will consider what he did."

¶ 10 Prior to sentencing, defendant submitted a mitigation report. This report stated, *inter alia*, that when defendant was born he tested positive for both cocaine and heroin, he was exposed to lead as an infant that required regular monitoring, and he was immediately separated from his mother. Further, although defendant grew up in a violent neighborhood, he was able to graduate high school and participate in sports. The report indicated defendant was registered for orientation at Wright Community College, and it included transcripts from defendant's high school as well as pay stubs from his employment with a "temporary agency." The report also included a section titled "The Young Developing Brain," which indicated that adolescents do not have the same cognitive abilities as adults because their brains are not fully developed.

¶ 11 In aggravation, the State noted defendant shot "several rounds" at a van containing four passengers, which "put the lives and safety of those people at risk." The State pointed out the passengers were unarmed and did not make any threats to defendant. It reminded the court defendant was unable to establish self-defense and argued evidence submitted in mitigation should actually be used in aggravation. The State asked for a substantial amount of time in the Illinois Department of Corrections (IDOC) because defendant is "a serious threat, not only to himself but to the community at large" and "has an utter disregard for the safety of the people in his neighborhood."

¶ 12 In mitigation, defense counsel referred to the mitigation report, noted defendant was a high school graduate, and referenced letters of support from his family. Further, defendant's aunt, Rae Dornbaugh, testified that defendant was always there to help anyone in the family and she "never seen him do anything violent." She asked for the minimum sentence and testified that she "personally will make sure that [defendant] continues in the route that he started and

finishing school [*sic*] and just becoming a productive member of society." Dornbaugh stated, "there is no justification for what he did but I don't believe that [defendant] shot into a car."

¶ 13 Defense counsel pointed out that the mitigation report reflected that defendant had "a lot of early challenges," including "being born drug addicted and lead exposed." Despite this, defendant graduated high school and was accepted into college, was involved in sports, maintained relationships with his family, and became employed. While defendant made "a terrible mistake here," this was his only adult conviction and had led a law-abiding life for a substantial period of time prior.

¶ 14 Counsel argued defendant acted "under a strong provocation" due to constant harassment from a street gang, which constitutes "substantial grounds tending to excuse or justify his criminal conduct." Further, defendant's character and attitude indicate he is unlikely to commit another crime and will comply with terms of probation. Counsel asked for defendant to be sentenced to the IDOC boot camp.

¶ 15 In allocution, defendant asked for forgiveness from the court and his family and stated that "it will never happen again." He noted that being locked up for two years had "taught [him] a lot."

¶ 16 The trial court sentenced defendant to 10 years' imprisonment in the IDOC on the aggravated discharge of a firearm count, merging the remaining counts into it. It also assessed fines and fees in the amount of $774. Prior to imposing the sentence, the court stated it had considered everything presented and had read back over the transcripts. It noted, in reference to the mitigation report, that "the neurologic development of a brain continues in the early 20s, therefore, adolescent brains are only a work in progress." The court continued:

> "The crime that you committed was really kind of a heinous crime and you know, I gave you the benefit of the doubt on a crime that would have put you in custody for 26 years on the bottom and you would have done 85 percent. I gave you the doubt, the benefit of the doubt, because I felt at this point in time that there just wasn't enough evidence, although it wasn't such a clear cut, not guilty or guilty, it was just a case that the State didn't prove the case, it doesn't mean you're necessarily you're not guilty of the crime as much. I just don't know that the State – I felt the State didn't prove that. The reason I'm telling you that is because it's not only a serious crime, it's actually something that I can't just come to grips with you as a young man would put yourself in a situation.
>
> Now, I realize, fortunately for you, I guess, it doesn't appear, the State has not put anything about gang affiliation. But it is absolutely unbelievable that you took a gun from your father, that you stole from your father, and obviously, in this Court's opinion, you were looking to make sure that, in your opinion, if anyone bothered you, you were going to deal with that."

¶ 17 The trial court noted that defendant told the police he was angry, and a witness testified that defendant continued firing shots and "kept on squeezing even after there weren't any bullets." The court pointed out the crime in Chicago occurring "every single day," involving "someone with guns and shootings and shootings and shootings." The court stated defendant was expelled from one high school but that he was able to find a job. Based on the evidence presented, it did not think the minimum sentence was adequate, but also did not think the maximum sentence was appropriate. It imposed a 10-year sentence.

¶ 18 The court then stated:

> "I want to make it clear. It's 85 percent, which I calculated just as I'm thinking right now, you've done two years. If you do ten, you will do eight-and-a-half years and you have done two, which means you will probably be, let's see, another six, how old are you, 20 some odd years old, which means you will be about 26 years old or so when you get out, which in this Court's opinion will hopefully have your brain, the cortex will be sufficient enough to maturity to have you realize that this conduct must stop and hopefully you'll be – you will be at a young age in order to at least go forward and do something good with your life."

¶ 19 Defendant filed a written motion to reduce sentence, which the trial court denied. Defendant filed a timely notice of appeal.

¶ 20 On appeal, defendant argues the trial court abused its discretion where it failed to adequately consider his rehabilitative potential and other mitigating evidence, and improperly considered other factors in imposing a 10-year prison sentence. He also challenges several assessments on his fines and fees order.

¶ 21 The trial court has broad discretion in imposing an appropriate sentence, and where, as here, that sentence falls within the range provided by statute, it will not be altered absent an abuse of discretion. *People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010). An abuse of discretion exists where the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000) (citing *People v. Fern*, 189 Ill. 2d 48, 54 (1999)). Because of its personal observation of defendant and the proceedings, the trial court is in the superior position to determine an appropriate sentence. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). It must weigh the

relevant sentencing factors, which include the defendant's demeanor, credibility, social environment, age, mentality, and moral character. *People v. Snyder*, 2011 IL 111382, ¶ 36.

¶ 22 We find the trial court did not abuse its discretion in imposing a 10-year prison sentence for the aggravated discharge of a firearm conviction. As charged here, the offense of aggravated discharge of a firearm is a Class 1 felony, punishable by 4 to 15 years' imprisonment. 720 ILCS 5/24-1.2(b) (West 2012); 730 ILCS 5/5-4.5-30(a) (West 2012). The 10-year sentence falls within this range provided for by statute, and we therefore presume it is proper. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12.

¶ 23 Defendant argues the trial court ignored defendant's rehabilitative potential and failed to properly weigh certain factors in mitigation. A sentence must reflect both the seriousness of the offense and the objective of restoring the offender to useful citizenship. *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27; Ill. Const. 1970, art. I, § 11. The seriousness of the offense, and not mitigating evidence, is the most important sentencing factor. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. Here, the evidence established that defendant shot a firearm repeatedly at a van containing four individuals. Given the danger of firing a firearm multiple times at an occupied van in the middle of a neighborhood, the trial court could have properly placed more emphasis on the seriousness of the offense over mitigating factors. See *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010) ("[t]he seriousness of the offense or the need to protect the public may outweigh mitigating factors and the goal of rehabilitation").

¶ 24 Defendant argues the trial court failed to consider that defendant was born drug addicted, was later exposed to lead, which caused behavioral issues, and was immediately separated from his mother. He further argues that he grew up in a dangerous neighborhood, excelled in high school and was accepted into college, and had "unwavering" family support throughout his life

and during the pendency of this case. Additionally, defendant notes that he lacked an intent to kill or harm the passengers in the van and cooperated with the subsequent investigation of the shooting. He argues the court was silent as to several mitigating factors, including, *inter alia*, his lack of a criminal background, his employment, and medical complications after he was born.

¶ 25 However, the defendant "must make an affirmative showing the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Here, this information was presented at trial, at sentencing, or was contained in the mitigation report, which was referenced by counsel. Further, the trial court stated it had considered everything that was presented, which necessarily includes the mitigation report submitted prior to sentencing, the arguments of defense counsel, and the facts presented at trial. It is presumed that when mitigating evidence is presented to the trial court, the court considered it absent some indication to the contrary, other than the sentence itself. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. Defendant can only point to the imposition of "a sentence over two times the minimum" as the basis for his belief the trial court did not consider his rehabilitative potential, which is insufficient to meet his burden to show that the trial court did not consider his mitigating evidence. In essence, defendant is asking us to reweigh the sentencing factors which we are not empowered to do. See *Stacey*, 193 Ill. 2d at 209.

¶ 26 Defendant next contends the trial court improperly considered certain factors in aggravation in imposing a sentence of 10 years' imprisonment. The State first responds that defendant has forfeited the issue on appeal by not raising it in the trial court. Defendant concedes in his reply brief he did not preserve this issue for appeal by raising it in the trial court but argues we should review this claim under the plain-error doctrine.

¶ 27 To preserve a sentencing issue for appeal, a defendant must raise the issue in the trial court, including through a written motion to reconsider sentence. *People v. Sharp*, 2015 IL App (1st) 130438, ¶ 132. Here, defendant's motion to reconsider sentence did not raise the argument that the trial court considered improper factors in imposing the sentence. Thus, the issue is forfeited on appeal. See *Sauseda*, 2016 IL App (1st) 140134, ¶ 11. However, sentencing issues raised for the first time on appeal may be reviewed under the plain-error doctrine. *Id.*

¶ 28 To obtain relief under the plain-error doctrine with respect to a sentencing issue, the defendant must show "(1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Defendant contends both prongs apply, arguing the evidence in mitigation and aggravation at sentencing was closely balanced and the error was so egregious as to deny defendant a fair sentencing hearing. However, we first determine whether any error occurred. *Sauseda*, 2016 IL App (1st) 140134, ¶ 11.

¶ 29 A trial court abuses its discretion when it considers an improper factor in aggravation. *People v. Minter*, 2015 IL App (1st) 120958, ¶ 147. However, "where the trial court appears to place minimal emphasis upon an improper factor, a new sentencing hearing is not required." *Id.* ¶ 152. "It is the defendant's burden to affirmatively establish that the sentence was based on improper considerations." *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 49.

¶ 30 We disagree with defendant that the trial court considered certain improper factors when imposing a 10-year sentence. Defendant first argues that, although the trial court acquitted him of attempted murder, it did not believe he was innocent of the offense. Specifically, he argues that the trial court's comments that it was giving defendant the "benefit of the doubt" on the attempted murder offense shows it used this offense as a basis "to impose a higher sentence."

¶ 31 Viewing the record in its entirety, there is simply no indication the trial court relied on this belief in imposing a 10-year sentence. The evidence presented at trial established that defendant engaged in dangerous conduct when he fired a gun multiple times at a van containing four people. The court stated:

> "The crime that you committed was really kind of a heinous crime and you know, I gave you the benefit of the doubt on a crime that would have put you in custody for 26 years on the bottom and you would have done 85 percent. I gave you the doubt, the benefit of the doubt, because I felt at this point in time that there just wasn't enough evidence, although it wasn't such a clear cut, not guilty or guilty, it was just a case that the State didn't prove the case, it doesn't mean you're necessarily you're not guilty of the crime as much. I just don't know that the State – I felt the State didn't prove that. The reason I'm telling you that is because it's not only a serious crime, it's actually something that I can't just come to grips with you as a young man would put yourself in a situation."

While the trial court stated the evidence did not prove defendant guilty beyond a reasonable doubt of attempted murder, it still considered defendant's actions, in committing aggravated discharge of a firearm, a "heinous crime" where defendant "kept on squeezing even after there weren't any bullets." The trial court may consider the nature and circumstance of the offense when fashioning a proper sentence. *Bowen*, 2015 IL App (1st) 132046, ¶ 50. Defendant cannot meet his burden to affirmatively establish that the trial court relied on improper considerations in imposing sentence. *Id.* ¶ 49.

¶ 32 Defendant next argues that the trial abused its discretion by assuming that defendant was involved in a gang where it stated, "fortunately for you, I guess, it doesn't appear, the State has not put anything about any gang affiliation." According to defendant, this comment implies that

the trial court still believed defendant was involved in a gang, despite the State's failure to prove his membership. We disagree. The trial court explicitly mentioned that the State did *not* put forth evidence about gang membership. In any event, we do not conclude that the trial court's comment references a belief defendant was involved in a gang. See *People v. Andrews*, 2013 IL App (1st) 121623, ¶ 15 ("a reviewing court determining whether a sentence is properly imposed should not focus on a few words or sentences of the trial court, but should consider the record as a whole"). Rather, the trial court was simply summarizing the evidence presented at trial and did not improperly rely on gang involvement.

¶ 33 Defendant contends the trial court abused its discretion by speculating that defendant's brain would be developed by the age of 26 and then imposing a sentence which keeps him incarcerated until that age. After the trial court sentenced defendant to 10 years' imprisonment, defense counsel asked for clarification of the sentence. The court responded:

> "I want to make it clear. It's 85 percent, which I calculated just as I'm thinking right now, you've done two years. If you do ten, you will do eight-and-a-half years and you have done two, which means you will probably be, let's see, another six, how old are you, 20 some odd years old, which means you will be about 26 years old or so when you get out, which in this Court's opinion will hopefully have your brain, the cortex will be sufficient enough to maturity to have you realize that this conduct must stop and hopefully you'll be – you will be at a young age in order to at least go forward and do something good with your life."

¶ 34 However, reading the trial court's comments in the context of the sentencing hearing, the comments were delivered after a sentence of 10 years' imprisonment had already been imposed. In fact, the trial court explicitly stated it was "calculat[ing] just as I'm thinking right now," how

old defendant would be when released, based upon his age and the 10-year sentence already imposed. We do not believe these comments reflect that the trial court used the mitigation report against defendant. Rather, the trial court's comments reflect its hope that defendant will be rehabilitated by the time he is released and highlight its duty to weigh the rehabilitative and retributive purposes of punishment. See *People v. Raymond*, 404 Ill App 3d 1028, 1069 (2010).

¶ 35 Moreover, there is no indication that the trial court imposed a 10-year sentence simply because he believed defendant's brain would be mature by the age of 26. To the contrary, the trial court considered the offense to be a "heinous crime" and arrived at the 10-year sentence after considering the requisite factors in aggravation and mitigation, including the seriousness of the offense and potential for rehabilitation. The trial court's reference to defendant's brain development was in relation to the study contained in the mitigation report submitted by defendant.

¶ 36 In summary, defendant's sentencing argument simply amounts to a disagreement with the sentence imposed rather than the trial court's failure to consider mitigating evidence and to balance defendant's rehabilitation potential. Accordingly, he has not met his burden to establish the court's reliance on improper factors as a basis for his sentence. See *Bowen*, 2015 IL App (1st) 132046, ¶ 49. Having determined that the trial court did not err in imposing defendant's 10-year sentence, we find no plain error. See *People v. Reed*, 2016 IL App (1st) 140498, ¶ 11 ("As we find no error occurred, there can be no plain error").

¶ 37 Finally, defendant argues three fees were improperly assessed and should be vacated, and nine fees are actually fines, subject to presentence incarceration credit.

¶ 38 As a threshold matter, defendant concedes that he did not raise the issue regarding the improper imposition of fines and fees in the trial court. He argues we may review this issue

under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967) or under the plain-error doctrine. The State does not argue the issue is forfeited.

¶ 39 We reject the assertion that we may address defendant's challenge to the fines and fees order under Rule 615 or the plain-error doctrine. *People v. Grigorov*, 2017 IL App (1st) 143274, ¶¶ 13-14; *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9; *contra People v. Cox*, 2017 IL App (1st) 151536, ¶ 102 (holding the improper imposition of fines and fees affect "substantial rights" and therefore may be reviewed under the second prong of the plain-error doctrine). 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 ("The rules of waiver also apply to the State, and where, as here, the State fails to argue that defendant has forfeited the issue, it has waived the forfeiture"). We review *de novo* the propriety of a court-ordered fine or fee. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 40 Defendant argues, and the State correctly concedes, the $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)) and the $5 court system fee (55 ILCS 5/5-1101(a) (West 2014)) were improperly assessed and should be vacated. The $5 electronic citation 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." See 705 ILCS 105/27.3e (West 2014). The $5 court system fee applies to a defendant who violates the Illinois Vehicle Code or a similar provision of a county or municipal ordinance. 55 ILCS 5/5-1101(a) (West 2014). Here, defendant was convicted of aggravated discharge of a firearm, which does not apply to the statutes. Accordingly, we vacate the $5 electronic citation fee and the $5 court system fee. See *People v.*

Robinson, 2015 IL App (1st) 130837, ¶ 115; see *People v. Brown*, 388 Ill. App. 3d 104, 112 (2009).

¶ 41 Defendant argues, and the State correctly concedes, the $20 probable cause hearing fee (55 ILCS 5/4-2002.1(a) (West 2014)) should be vacated. This fee does not apply because defendant was charged by indictment and no probable cause hearing was held. See *Bridgeforth*, 2017 IL App (1st) 143637, ¶ 47.

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

¶ 43 Defendant argues, and the State concedes, the $50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2014)) and the $15 state police operations charge (705 ILCS 105/27.3a(1.5) (West 2014)) are fines subject to presentence incarceration credit. We agree with the parties that these fees are actually fines. See *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 ("we hold that the $50 Court System fee imposed in this case pursuant to section 5-1101(c) is a fine for which defendant can receive credit for the *** days he spent in presentence custody"); see *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 140-41 ("[s]ince the state operations charge under section 27.3a(1.5) is a fine, defendant is entitled to presentence credit toward it").

¶ 44 Defendant next contends 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. Defendant argues that for an assessment to be characterized as a fee, it must reimburse the State for some

costs incurred in prosecuting the particular defendant. He cites *People v. Graves*, 235 Ill. 2d 244, 250 (2009) as support.

¶ 45 However, this court has already considered challenges to these assessments and determined they are fees and, therefore, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006) ("[w]e 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' "); *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 clerk automation fee and document storage fee are fees not subject to offset by presentence incarceration credit); *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (relying on *Tolliver* and finding the $25 court services charge is a fee not subject to offset by presentence incarceration credit). These cases are consistent with our supreme court's decision in *Graves*. We hold that these charges are fees not subject to offset by presentence incarceration credit.

¶ 46 Defendant next contends the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)) and the $2 public defender records automation fee (55 ILCS 5/3-4012 (West 2014)) are actually fines because they do not compensate the State for prosecuting defendant.

¶ 47 This court has previously found both the $2 State's Attorney records automation fee and the $2 public defender records automation fee are not fines and thus, not subject to presentence custody credit. See generally *Brown*, 2017 IL App (1st) 142877, ¶¶ 73, 75 (finding the State's Attorney records automation fee and Public Defender records automation fee to be fees); *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17 (same); *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-

65 (finding the State's Attorney records automation assessment and the public defender records automation assessment are both fees because they are meant to reimburse the State for expenses related to automated record-keeping systems). Although we recognize that *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, found these assessments to be fines, we follow *Brown*, *Reed*, and *Bowen* and determine that the State's Attorney records automation charge and the public defender records automation charge are fees, not subject to offset by presentence custody credit.

¶ 48 Defendant argues the $10 probation and court services operations fee (705 ILCS 105/27.3a(1.1) (West 2014)) is actually a fine because it is imposed on all defendants "upon a judgment of guilty or grant of supervision" regardless whether the probation department was utilized in each defendant's case. The State argues that it is a fee because it is compensatory in nature as it reimburses the State for costs of prosecuting defendant. Here, the probation department prepared the presentence investigation report used at sentencing. We agree with the State and find this assessment to be a fee. See *People v. Rogers*, 2014 IL App (4th) 121088, ¶¶ 37-39; *contra People v. Carter*, 2016 IL App (3d) 140196, ¶¶ 56-57 (declining to follow *Rogers* and finding this assessment to be a fine regardless of whether the defendant actually utilized probation services). Accordingly, we follow *Rogers* and determine that this assessment is a fee not subject to offset by presentence incarceration credit.

¶ 49 For the reasons set forth above, we affirm defendant's conviction and sentence. We vacate the $5 electronic citation fee, the $5 court system fee, and the $20 probable cause hearing fee and find the $50 court system fee and the $15 state police operations charge are fines subject to 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, the $2 State's

Attorney records automation charge, the $2 public defender records automation charge, and the $10 probation and court services operation charge are fees not subject to presentence incarceration credit. The fines and fees order should reflect a new total due of $679. Pursuant to Illinois Supreme Court Rule 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.

¶ 50 Affirmed; fines and fees order corrected.