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2017 IL App (3d) 150220-U

Order filed February 28, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Whiteside County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0220
JOSEPH R. NELSON,)	Circuit No. 14-CF-126
Defendant-Appellant.)	Honorable John L. Hauptman, Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The \$50 court systems fee, \$15 State Police Operations Assistance fee, and \$10 probation operations fee imposed by the circuit court were fines subject to the \$5-per-day presentence incarceration credit. (2) Defendant's judicial security fee should be reduced to \$25 in accordance with the circuit court's order and under the applicable statute.
- ¶ 2 Defendant, Joseph R. Nelson, argues that: (1) his \$5-per-day presentence incarceration credit should apply against certain fines imposed against him, and (2) his judicial security fee

should be reduced to \$25 to conform with the circuit court's order and statutory requirements.
We remand with directions.

¶ 3

FACTS

¶ 4

Defendant was charged with aggravated cruelty to animals (510 ILCS 70/3.02 (West 2014)). Following a bench trial, the circuit court found defendant guilty and sentenced him to six years' imprisonment. At the sentencing hearing, the circuit court imposed various monetary assessments:

“[Defendant] is ordered to pay the cost of these proceedings, enumerated as follows: A clerk's fee of \$75, a court fee of \$50, an automation document storage and state police ops fees of \$15.00 each, a State's attorney automation fee of \$2, a probation ops fee and medical costs fee of \$10.00 each, sheriff's fee of \$80, a judicial security fee of \$25.

And on motion of the State and pursuant to statute, a State's attorneys fees of \$55.

He is also ordered to pay the child advocacy fee of \$15.00, a drug court fee of \$10.00, a Violent Crime Victim's Assistance fund of \$100.00. ISP Merit Board fee of \$15.00.”

¶ 5

The circuit court awarded defendant the \$5-per-day presentence incarceration credit for 291 days in presentence custody, but stated that the monetary credit only applied toward the \$10 drug court fee and the \$15 Children's Advocacy Center fee.

¶ 6

A “Payment Information” sheet, which was apparently generated by the circuit clerk, appears in the record. The sheet lists defendant's case number, and indicates that he owes the following assessments: (1) \$75 “Clerk” assessment, (2) \$50 “Court” assessment, (3) \$15

“Automation” assessment; (4) \$15 “Document Storage” assessment, (5) \$15 “State Police Ops” assessment, (6) \$2 “SA Automation Fee,” (7) \$10 “Probation Ops Fee,” (8) \$10 “Medical Costs” assessment, (9) \$80 “Sheriff” assessment, (10) \$250 “Judicial Security” assessment, (11) \$55 “State’s Atty” assessment, (12) \$100 “Violent Crime” assessment, and (13) \$15 “ISP Merit Board” assessment.

¶ 7

ANALYSIS

¶ 8

I. Presentence Incarceration Credit

¶ 9

The circuit court awarded defendant the \$5-per-day credit pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2014)) for 291 days in presentence custody—which comes to \$1455. The circuit court found, however, that the credit only applied against the \$10 drug court fee and the \$15 Children’s Advocacy Center fee. Defendant argues the presentence incarceration credit should be applied against three additional fines: (1) the \$50 court systems fee, (2) the \$15 State Police Operations Assistance Fund fee, and (3) the \$10 probation operations fee. The State concedes that the presentence incarceration credit should be applied against the \$50 court systems fee and the \$15 State Police Operations Assistance Fund fee. Upon considering the arguments of the parties and reviewing the record, we accept the State’s concession.

¶ 10

It appears that the “court fee of \$50” imposed by the circuit court is the court fund fee authorized by section 5-1101(c)(1) of the Counties Code (55 ILCS 5/5-1101(c)(1) (West 2014)). This assessment is a fine subject to the \$5-per-day presentence incarceration credit. *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 21-22. The “state police ops fee[] of \$15.00” assessed by the circuit court appears to be the State Police Operations Assistance Fund fee authorized under section 27.3a(1.5) of the Clerks of Courts Act (705 ILCS 105/27.3a (West 2014)). This

assessment is also a fine subject to the presentence incarceration credit. *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 13.

¶ 11 In his reply brief, defendant argued for the first time that his presentence incarceration credit should also apply against his \$10 probation operations fee. We acknowledge that pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016), “[p]oints not argued [in the initial appellate brief] are waived and shall not be raised in the reply brief ***.” However, “[w]aiver is a limitation on the parties and not the jurisdiction of the courts.” *People v. Collins*, 301 Ill. App. 3d 529, 531 (1998). Because the outcome of this issue is clearly controlled by case law, we will address it in the interest of judicial economy. See *People v. Scott*, 277 Ill. App. 3d 565, 566 (1996) (“Granting the credit is a simple ministerial act that will promote judicial economy by ending any further proceedings over the matter.”).

¶ 12 The “probation ops fee *** of \$10.00” imposed by the circuit court refers to the probation operations fee, which is authorized by section 27.3a(1.1) of the Clerks of Courts Act (705 ILCS 105/27.3a(1.1) (West 2014)). In *People v. Carter*, 2016 IL App (3d) 140196, ¶ 56, we determined that the probation operations fee qualifies as a fine. As such, it is subject to the \$5-per-day presentence incarceration credit. See 725 ILCS 5/110-14(a) (West 2014).

¶ 13 **II. Judicial Security Fee**

¶ 14 Defendant next argues that the \$250 judicial security fee that appears in the “Payment Information” sheet generated by the circuit clerk should be reduced to \$25. We find that the \$250 judicial security fee reflected on the clerk’s payment sheet is improper for two reasons: (1) the circuit court imposed only a \$25 fee, and (2) the maximum judicial security fee allowed under section 5-1103 of the Counties Code (55 ILCS 5/5-1103 (West 2014)) was \$25. Because the circuit clerk was not authorized to impose a \$250 judicial security fee by order of the circuit

court or by statute, the fee is void. See *People v. Gutierrez*, 2012 IL 111590, ¶ 14. Therefore, the fee should be reduced to \$25 to conform with the circuit court's order.

¶ 15 We reject the State's argument that we lack jurisdiction to address this issue because the \$250 judicial security fee shown on the clerk's "Payment Information" sheet is not an order of the circuit court but rather is likely a scrivener's error. Our supreme court rejected a similar argument in *Gutierrez. Id.* The *Gutierrez* court held that it had jurisdiction to consider a public defender fee improperly imposed by the circuit clerk because the fee was void and the defendant's notice of appeal "brought up his entire conviction for review." *Id.* As in *Gutierrez*, the judicial security fee is void to the extent that it exceeds \$25 and defendant's notice of appeal brought his entire conviction and sentence up for review. See *id.* The fact that the amount of the judicial security fee reflected in the clerk's payment sheet may be a scrivener's error does not affect the void nature of the fee or our ability to address it in this appeal.

¶ 16 CONCLUSION

¶ 17 We remand this matter to the circuit court for application of the presentence incarceration credit against (1) the \$50 court systems fee, (2) the \$15 State Police Operations Assistance Fund fee, and (3) the \$10 probation operations fee. The circuit court shall also direct the circuit clerk to reduce the judicial security fee to \$25 to conform with the circuit court's previous order.

¶ 18 Remanded with directions.