2018 IL App (1st) 152633-U

No. 1-15-2633

Fourth Division
August 2, 2018

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. 12 C6 60253
	)	
EMMANUEL POE,	)	Honorable
	)	Brian K. Flaherty,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's fines, fees and costs are modified under second prong of plain error rule.

¶ 2 Following a jury trial, defendant Emmanuel Poe was convicted of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(1) (West 2012)) based on a shooting incident that occurred in the early morning hours on January 22, 2012. At the sentencing hearing that followed, the circuit court sentenced defendant to four years' imprisonment and assessed $837 in fines and fees.

¶ 3 On appeal, defendant contends that the $837 in fines and fees imposed against him was erroneous because several of the assessments labeled as fees were actually fines that are subject to the $5-per-day presentence incarceration credit. Defendant also contends that a $100 Violent Crime Victim Assistance fine (725 ILCS 240/10(b)(1) (West 2012)) and a $20 Violent Crime Victim Assistance fine (725 ILCS 240/10 (c)(2) (West 2012)) were imposed upon him in violation of the federal constitution's prohibition against *ex post facto* punishments because the statutory provisions authorizing those fines had not gone into effect at the time defendant's offense occurred. He also requests that the $5 Electronic Citation fee be vacated because he was not convicted of the offenses listed under the statute. See 705 ILCS 105/27.3e (West 2012). Defendant further requests this court to modify his fines, fees and costs order to reflect that he was assessed a total of $502.

¶ 4 On the merits, this is a straightforward case. But procedurally, defendant never objected in the court below when the fines, fees, and costs he now challenges were imposed. Nor did he raise this issue in his motion to reconsider sentence. As a result, defendant has forfeited this issue. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 5 In light of his forfeiture, defendant urges us to consider the issue of the improper imposition of fines and fees as second-prong plain-error because the erroneous imposition of a fine or fee affects a defendant's substantial rights. The State, countering, responds that review under the plain-error doctrine is inappropriate because "[t]he amount of the credit alleged owed is not substantial."

¶ 6 We find that the issue of whether a fine or fee was improperly imposed is reviewable as second-prong plain error. This division recently so held in *People v. Cox*, 2017 IL App (1st)

151536, ¶¶ 97-103, where Justice Gordon, writing for the court, noted that a fine is merely the financial component of a criminal sentence, and the imposition of any unauthorized sentence affects substantial rights reviewable under the second prong of the plain-error doctrine. See *People v. Johnson*, 2011 IL 111817, ¶ 16 (fine is part of sentence on person convicted of criminal offense); *People v. Johnson*, 2015 IL App (3d) 140364, ¶¶ 11 (fines are the "financial component of a felony sentence"); *People v. Fort*, 2017 IL 118966, ¶ 19 (" '[t]he imposition of an unauthorized sentence affects substantial rights' and, thus, may be considered by a reviewing court even if not properly preserved in the trial court." (quoting *People v. Hicks*, 181 Ill. 2d 541, 545 (1998)).

¶ 7 Thus, we will review this issue under the second-prong of the plain-error doctrine. *Cox*, 2017 IL App (1st) 151536, ¶¶ 99; *accord Mullen*, 2018 IL App (1st) 152306, ¶ 38 ("We can and should review these legal errors in the assessment of fines and fees as plain error."); *but see People v. Griffin*, 2017 IL App (1st) 14388, ¶¶ 9, 24-25, *appeal allowed*, No. 122549, 93 N.E.3d 1087 (Ill. Nov. 22, 2017) (denying plain-error review to alleged errors in imposition of fines and fees).

¶ 8 We reject the State's assertion that a component of a defendant's sentence imposed by the circuit court can evade plain-error review if the component in question is, as the State puts it, "not substantial." The supreme court explicitly rejected a similar argument in *People v. Lewis*, 234 Ill. 2d 32, 48 (2009):

> "Contrary to the appellate court, we do not believe a *de minimus* exception can be placed on plain-error review. The exception would be difficult to implement because it would require declaring when the dispute becomes significant rather than *de minimus.*

> The question would necessarily arise as to where the line should be drawn. More importantly, a *de minimus* exception is inconsistent with the fundamental fairness concerns of the plain-error doctrine. Plain-error review focuses on the fairness of a proceeding and the integrity of the judicial process. [Citations]. An error may involve a relatively small amount of money or unimportant matter, but still affect the integrity of the judicial process and the fairness of the proceeding if the controversy is determined in an arbitrary or unreasoned manner."

¶ 9 We thus disagree that the allegedly insubstantial amount of the fines and fees at issue renders their imposition immune from plain-error review. See *id.*; see also *Mullen*, 2018 IL App (1st) 152306, ¶ 31 (noting that imposition of fines and fees "matters to defendants, as unpaid fines can subject a defendant to orders of withholding and wage garnishment); *People v. Smith*, 2018 IL App (1st) 151402, ¶ 9 (same).

¶ 10 Defendant first argues that the $100 fine for the Violent Crime Victims Assistance Fund (725 ILCS 240/10(b)(1)(West 2012)) was improperly assessed against him. Defendant maintains, and the State concedes, that the statute authorizing the imposition of the Violent Crime Victims Assistance Fund fine was not in effect at the time of defendant's offense. The statute authorizing this fine became effective on July 16, 2012. See P.A. 97-816, §10. But the shooting at issue in this case occurred on January 22, 2012. Because the statute authorizing this fine was not effective at the time of defendant's offense, we vacate defendant's $100 Violent Crime Victims Assistance Fund fine.

¶ 11 Next, defendant argues, and the State concedes, that the $20 fine imposed under section 10(c)(2) of the Code of Criminal Procedure was improperly assessed. Section 10(c)(2) imposes a

$20 fine for any felony or misdemeanor "where no other fine has been imposed." 725 ILCS 240/10(c)(2) (West 2012). Since several fines were imposed upon defendant, the fine authorized by section 10(c)(2) was inapplicable to him. We therefore vacate this fine as well.

¶ 12 Next, defendant argues that the $15 State Police Operations fee, the $2 State's Attorney Records Automation fee, the $190 Felony Complaint Filing fee, the $15 Clerk Automation fee, the $15 Document Storage fee, the $25 Sheriff's Court Service fee, and the $50 Court Systems fee are all fines and therefore, are subject to the $5-per-day presentence incarceration credit. Thus, defendant requests that we reduce the total of his unpaid fees, from $837, to $502.

¶ 13 A defendant is entitled to credit of $5 for each day he is incarcerated, with that amount to be applied toward the fines levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2014). Defendant received credit for 42 days in custody prior to sentencing. Therefore, at $5-per-day, he was entitled to $210 of presentencing credit.

¶ 14 A "fine" is punitive in nature and is imposed as part of a sentence on a person convicted of a criminal offense. *People v. Graves*, 235 Ill.2d 244, 250 (2009). A "fee" is a charge that seeks to recoup expenses incurred by the State in prosecuting the defendant. *Id*. The legislature's label for a charge is strong evidence of whether the charge is a fee or a fine, but the most important factor is whether the charge seeks to compensate the State for any cost incurred as a result of prosecuting the defendant. *Id*.

¶ 15 With respect to the $50 court system fee (see 55 ILCS 5/5-1101(c)(1) (West 2014)) and the $15 State Police operations fee (see 705 ILCS 105/27.3a(1.5) (West 2014)), the State concedes, and we agree, that these "fees" are actually fines. *People v. Ackerman*, 2014 IL App (3rd) 120585, ¶ 30 ("the court systems fee *** was actually a fine"); *People v. Millsap*, 2012 IL

App (4th) 110668, ¶ 31 ("the State Police operations assistance fee is also a fine"). Accordingly, both charges should be offset by defendant's presentence incarceration credit.

¶ 16 With respect to the $5 court system fee, the State concedes, and we agree, that this fee was improperly assessed against defendant. The court system fee is assessed when a defendant is found guilty of violating the Illinois Vehicle Code or similar provision in a county or municipal ordinance. 55 ILCS 5/5-1101(a) (West 2014). Defendant was not found guilty of violating the Illinois Vehicle Code or similar provision. Therefore, the fee was incorrectly assessed against him. Accordingly, we vacate the $5 court system fee.

¶ 17 Next, defendant argues that a portion of his presentence custody credit should be applied to the $2 State's Attorney records automation charge because this assessment is a fine rather than a fee, since it does not reimburse the State for costs incurred in prosecuting a particular defendant. 55 ILCS 5/4-2002.1(c) (West 2012). We disagree. See *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 ("[T]he bulk of legal authority has concluded that [the Public Defender and State's Attorney records automation charges] are fees rather than fines because they are designed to compensate those organizations for the expenses they incur in updating their automated record-keeping systems while prosecuting and defending criminal defendants."). To be sure, in *People v. Camacho*, 2016 IL App (1st) 140604, a panel of this court reached a contrary conclusion and held that these "fees" are actually fines. See *id*. ¶¶ 47-56. *Camacho* notwithstanding, we choose to follow the weight of authority and hold that State's Attorney records automation fee is in fact a fee. See *People v. Jones*, 2017 IL App (1st) 143766, ¶ 53 ("Although the *Camacho* court's analysis of this issue has some persuasive value, we nevertheless decline defendant's invitation to digress from the weight of established precedent by

classifying the records automation fees as fines."). Accordingly, defendant is not entitled to presentence custody credit toward this assessment.

¶ 18 Lastly, defendant contends that the $190 felony complaint filing 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)), and the $25 court services fee (55 ILCS 5/5-1103 (West 2012)) are all fines subject to presentence incarceration credit. This court has already found that these "fees" are truly fees because they "are compensatory and a collateral consequence of defendant's conviction." *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006).

¶ 19 For the reasons set forth above, we find that the $50 court system fee and $15 State Police operations "fees" are actually fines and are offset by defendant's presentence credit. The $100 Violent Crime Victim Assistance fine, the $20 Violent Crime Victim Assistance Fine, and the $5 Electronic Citation fee are vacated. Accordingly, we correct defendant's mittimus to reflect $647 in fines and fees.

¶ 20 Mittimus corrected.