

2018 IL App (1st) 152885-U

No. 1-15-2885

Order filed February 2, 2018

Fifth 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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 1775
)	
SALVADOR RIOS-MARTINEZ,)	Honorable
)	Thomas V. Gainer, Jr.,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* We vacate one improperly-assessed fine and modify the fines and fees order.

¶ 2 Following a bench trial, defendant Salvador Rios-Martinez was found guilty of aggravated assault (720 ILCS 5/12-2(c)(3) (West 2012)) and sentenced to two years' probation with the first 180 days to be served in the Cook County Department of Corrections. He was further assessed various fines and fees in the amount of \$749. On appeal, defendant argues one charge was improperly assessed and he is entitled to presentence incarceration credit to offset

certain imposed fines. We vacate one improperly-assessed fee and modify the fines and fees order.

¶ 3 The evidence presented at trial established that defendant drove up to the victim, who was the current boyfriend of defendant's ex-girlfriend. Defendant then displayed a gun to the victim. The victim, who was on the phone with a 911 operator, began following defendant in order to get his license plate number. Eventually, the two cars turned in opposite directions, and the victim began driving away from defendant. Defendant, from about 80 to 100 feet, fired multiple gunshots, striking the victim's car. Defendant was later arrested.

¶ 4 The trial court found defendant guilty of aggravated assault and sentenced him to two years' probation with the first 180 days to be served in the Cook County of Corrections. It further assessed him fines and fees in the amount of \$749. Defendant filed a timely notice of appeal.

¶ 5 On appeal, defendant contends the \$20 violent crime victims assistance fund fine was improperly assessed and must be vacated and that he is entitled to presentence incarceration credit to offset imposed fines. Defendant did not raise the issue regarding the improper imposition of fines in the trial court but asserts we may review the issue under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967) or the plain-error doctrine.

¶ 6 We reject the assertion that we may address defendant's challenge to the improper imposition of the violent crime victims assistance fund fine 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, *pet. for leave to appeal allowed*, No. 122549 (Nov. 22, 2017); *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 this fine. 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. v. Reed*, 2016 IL App (1st) 140498, ¶ 13.

¶ 7 Defendant argues, and the State correctly concedes, the \$20 violent crime victims assistance fund fine (725 ILCS 240/10(c)(2) (West 2012)) was improperly assessed and must be vacated. Defendant asserts the violent crime victims assistance fund fine is only applicable where a defendant has not been assessed any other fines and, here, he has been assessed other fines. See 725 ILCS 240/10(c) (West 2012). The State contends that the statute has been amended to remove the language regarding other fines, but points out the updated statute calls for a greater fine, which would impermissibly "enlarge defendant's sentence." We note that effective July 16, 2012, the statute was amended and the section authorizing this particular \$20 assessment was removed. See Pub. Act 97-816 § 10 (eff. July 16, 2012) (amending 725 ILCS 240/10(b)); *People v. Glass*, 2017 IL App (1st) 143551, ¶ 23. When defendant committed the offense of aggravated assault on December 20, 2013, the statutory section allowing for this \$20 fine was no longer in effect and thus, the fine was improperly assessed. Therefore, we vacate the \$20 violent crime victims assistance fund fine. *Glass*, 2017 IL App (1st) 143551, ¶ 23.

¶ 8 Defendant next requests a \$5 *per diem* credit for the five days he spent in presentence incarceration to offset the imposed fines. We note that defendant's fines and fees order states that certain fines should be offset by presentence incarceration credit but the order does not reflect

any offset. 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 2012). While defendant did not raise this issue in the trial court, claims for statutory monetary credit pursuant to section 110-14 of the Code of Criminal Procedure of 1963 may be raised at any time, and we therefore are able to address this issue. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008); *People v. Brown*, 2017 IL App (1st) 150203, ¶¶ 36-38.

¶ 9 Here, defendant spent five days in presentence custody and is therefore entitled to a \$25 credit to offset certain imposed fines. Defendant asserts that his credit should be applied to the following fines, the total of which exceeds \$25: the \$10 mental health court fine (55 ILCS 5/5-1101(d-5) (West 2012)), the \$5 youth diversion / peer court charge (55 ILCS 5/5-1101(e) (West 2012)), the \$5 drug court fine (55 ILCS 5/5-1101(f) (West 2012)), the \$30 children's advocacy center assessment (55 ILCS 5/5-1101(f-5) (West 2012)), and the \$30 fine to fund expungement of juvenile records (730 ILCS 5/5-9-1.17 (West 2012)). Accordingly, defendant is entitled to a \$25 credit towards the offset of these imposed fines. Defendant's new total, including the vacated \$20 violent crime victims assistance fund fine, should reflect a balance due of \$704.

¶ 10 For the reasons set forth above, we vacate the \$20 violent crime victims assistance fund fine and credit defendant with \$25 towards his fines. The fines and fees order should reflect a new total due of \$704. 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.

¶ 11 Affirmed as modified.