

No. 1-15-3368

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 15720
)	
MICHAEL LEWIS,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's fines, fees, and costs order modified; judgment of the circuit court affirmed in all other respects.

¶ 2 Following a bench trial, defendant-appellant, Michael Lewis, was convicted of possession of a stolen motor vehicle and sentenced to six years' imprisonment. On appeal, defendant challenges only the trial court's assessment of certain fines and fees. We direct the clerk of the circuit court to modify defendant's fines, fees, and costs order and affirm the judgment of the circuit court in all other respects.

¶ 3 Defendant was charged by information with one count of possession of a stolen motor vehicle. At trial, the State presented evidence that, on June 29, 2014, a security camera captured footage of defendant pushing a motor scooter, belonging to Andre Baines, out of Mr. Baines's gated back yard without his permission. Mr. Baines knew defendant from the neighborhood, gave the police his nickname and address, and identified him in court.

¶ 4 Defendant testified that, on the night in question, he saw a man, whose name defendant did not know, with Mr. Baines's scooter. When the man admitted that the scooter was stolen, defendant grabbed the scooter and went to return it to Mr. Baines. According to defendant, the video footage depicted him returning the scooter, not taking it.

¶ 5 Based on the evidence, the trial court found defendant guilty of possession of a stolen motor vehicle and denied his motion for a new trial. Defendant was sentenced to six years' imprisonment and assessed a total of \$449 in fines, fees, and costs with a credit of 402 days spent in presentence custody which is reflected in the record on appeal. The fines, fees, and costs order included the preprinted notation "[a]llowable credit toward fine will be calculated," but it did not specify the total monetary credit defendant would receive. The trial court denied defendant's motion to reconsider the sentence.

¶ 6 On appeal, defendant contends that this court should vacate one fee improperly assessed by the trial court and that he be given a \$5-per-day presentence custody credit against 12 other assessments. He acknowledges that he did not challenge his fines, fees, and costs order in a postsentencing motion. Nevertheless, defendant argues that his contentions may be considered by this court under the plain-error doctrine and Illinois Supreme Court Rule 615(b).

¶ 7 The State responded that "errors in the fines, fees, and costs order may be corrected despite the forfeiture," and has waived any forfeiture argument. *People v. Smith*, 2018 IL App

(1st) 151402, ¶ 7. As such, we will address defendant's claims. Our review of the propriety of the trial court's imposition of fines and fees is *de novo*. *Id.*

¶ 8 First, defendant contends, and the State concedes, that the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2011)) must be vacated. We agree as this assessment does not apply to felonies. *Smith*, 2018 IL App (1st) 151402, ¶ 12. Here, defendant was convicted of a felony and, as such, we vacate this assessment and direct the clerk of the circuit court to correct the fines, fees, and costs order accordingly.

¶ 9 Next, defendant contends that he is entitled to presentence custody credit against his remaining fines. Under section 110-14(a) of the Code of Criminal Procedure of 1963, an offender who has been assessed one or more fines is entitled to a \$5-per-day credit for time spent in presentence custody as a result of the offense for which the sentence was imposed. 725 ILCS 5/110-14(a) (West 2014). It is well-established that the presentence custody credit applies only to the reduction of fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006). A "fine" is punitive in nature, while a "fee" is assessed to compensate the State or recoup expenses incurred by the State in prosecuting a defendant. *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 21. Our supreme court has held that claims for \$5-per-day credit may be raised at any time and stage of court proceedings and that, if the basis for granting such credit is clear and available from the record, an appellate court may grant the relief requested. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008); see also *People v. Brown*, 2017 IL App (1st) 150203, ¶ 36. Here, defendant spent 402 days in presentence custody and, therefore, he is entitled to up to \$2,010 in presentence custody credit against his fines.

¶ 10 Defendant argues, and the State concedes, that he is entitled to credit against four assessments designated as fines offset by the \$5-per-day presentence incarceration credit on the

fines, fees, and costs order: the \$10 mental health court fine (55 ILCS 5/5-1101(d-5) (West 2013)); the \$5 youth diversion/peer court fine (55 ILCS 5/5-1101(e) (West 2013)); the \$5 drug court fine (55 ILCS 5/5-1101(f) (West 2013)); and the \$30 Children’s Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2013)). We accept the State’s concession and hold that these assessments are fines against which defendant may receive \$5-per-day credit for time spent in presentence custody. See *People v. Price*, 375 Ill. App. 3d 684, 700-01 (2007) (\$10 mental health court fine and \$5 youth diversion/peer court fine)); *People v. Unander*, 404 Ill. App. 3d 884, 886 (2010) (\$5 drug court fine)); *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009) (\$30 Children’s Advocacy Center fine)).

¶ 11 We are mindful of the State’s argument that, because the fines, fees, and costs order designates these four assessments as fines subject to offset, defendant has already been credited the total amount for these four fines and “is not entitled to additional credit.” While it is true that the written order includes this designation, we cannot discern from the order whether defendant actually received credit against these fines. To ensure that he does, we direct the clerk of the circuit court to modify the fines, fees, and costs order to reflect this credit. See *Mullen*, 2018 IL App (1st) 152306, ¶ 58 (Where this court was “unsure whether the presence or absence of a calculation [in the fines, fees, and costs order] affects whether a defendant receives the necessary credit,” we ordered modification of the order to ensure the defendant received his due credit.).

¶ 12 Defendant further argues that he is entitled to credit against eight assessments that are designated on the fines, fees, and costs order as “fees and costs *not* offset by the \$5 per-day presentence incarceration credit.” (Capitalization omitted; emphasis in original.) These fees are the \$190 felony complaint filed fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)); the \$15 automation fee (705 ILCS 105/27.3a(1) (West 2016)); the \$15 State Police Operations fee (705

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ILCS 105/27.3a(1.5) (West 2014)); the \$2 Public Defender Records Automation fee (55 ILCS 5/3-4012 (West 2012)); the \$2 State's Attorney Records Automation fee (55 ILCS 5/4-2002.1(c) (West 2017)); the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)); the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2011)); the \$25 court services fee (55 ILCS 5/5-1103 (West 2016)); and a \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2013)).

¶ 13 The State agrees with defendant that he is entitled to presentence incarceration credit against two of these assessments: the \$15 State Police Operations fee (see *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31) and the \$50 court system fee (see *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30). We agree with the State and hold that these assessments are fines against which defendant may receive \$5-per-day credit for the time he spent in presentence custody and direct the clerk of the circuit court to correct the fines, fees, and costs order to reflect this credit.

¶ 14 The State does not concede defendant's claim for credit against the \$190 felony complaint fee; the \$15 automation fee; the \$2 Public Defender Records Automation fee; the \$2 State's Attorney Records Automation fee; the \$15 document storage fee; and the \$25 court services fee. This court has previously considered challenges to these six assessments and found them to be fees, not fines and are, therefore, not subject to offset by the \$5-per-day presentence custody credit. *Smith*, 2018 IL App (1st) 151402, ¶¶ 15, 16. As for the \$2 State's Attorney Records Automation fee and the \$2 Public Defender Records Automation fee, the overwhelming majority of legal authority holds that they are fees not subject to offset. See *e.g., id.* ¶ 16; *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (collecting cases); but also see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (finding that these two assessments are fines, not fees). In

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keeping with precedent, we conclude that these six assessments are fees and, therefore, may not be offset by defendant's presentence custody credit.¹

¶ 15 For the reasons set forth above, we vacate the \$5 electronic citation fee and find that the \$10 mental health court fine; the \$5 youth diversion/peer court fine; the \$5 drug court fine; the \$30 children's advocacy center fine, the \$15 State Police Operations fee, and the \$50 court system fee are offset by presentence credit. The total amount of fines, fees, and costs is reduced from \$449 to \$329. We direct the clerk of the circuit court to modify the fines, fees, and costs order accordingly.

¶ 16 Fines, fees, and costs order modified; judgment of the circuit court is affirmed in all other respects.

¹ We note that our supreme court has allowed appeal in a case where this court determined that all six of these assessments are fees not subject to offset. *People v. Clark*, 2017 IL App (1st) 150740-U, ¶¶ 21-23, *appeal allowed*, No. 122495 (Sept. 27, 2017).