

2018 IL App (1st) 160053-U
No. 1-16-0053
Order filed November 28, 2018

Third 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. 15 CR 5528
)	
TRACIE THOMPSON,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's fines and fees order amended to vacate the \$5 electronic citation fee; it is presumed the clerk of the circuit court will apply monetary credit against eligible fines; claim that additional fees constitute fines entitled to monetary credit is moot where defendant has exhausted his presentence credit.
- ¶ 2 Following a jury trial, defendant Tracie Thompson was convicted of delivery of a controlled substance and sentenced to four years' imprisonment. The trial court also assessed defendant fines, fees and court costs totaling \$1699. On appeal, defendant does not challenge her

conviction or term of imprisonment, but contends that her fines and fees order should be amended. Defendant contends that the \$5 electronic citation fee was improperly assessed and should be vacated. She also contends that monetary credit for the days she spent in presentencing custody should be applied against several assessments. We vacate the \$5 electronic citation fee and affirm defendant's conviction and sentence in all other respects.

¶ 3 Because defendant does not challenge her conviction or prison term, we need not discuss the details of the evidence presented at trial or the other proceedings below. Defendant was charged with one count of delivery of a controlled substance, and one count of committing that offense within 1000 feet of a school. The evidence established that on March 12, 2015, defendant delivered four plastic bags of crack cocaine to an undercover Chicago police officer in exchange for \$50 in prerecorded police funds. A forensic chemist tested the substance in one of the four bags and found it positive for .071 gram of cocaine. The jury found defendant guilty of delivery of a controlled substance, but not guilty of committing the offense within 1000 feet of a school. The trial court sentenced defendant to four years' imprisonment, and awarded her 84 days of credit for time served in presentence custody. The court also assessed defendant \$1699 in fines, fees and court costs.

¶ 4 On appeal, defendant contends that the \$5 electronic citation fee must be vacated because it was erroneously assessed. Defendant also contends that she is entitled to apply a credit of \$420 against \$1180 in fines that are designated as subject to offset by the presentence monetary credit. Defendant further argues that several assessments that are labeled as fees are actually fines which are also eligible to be offset by her monetary credit.

¶ 5 Defendant acknowledges that she did not preserve these issues for appeal because she did not challenge the assessments in the trial court. See *People v. Harvey*, 2018 IL 122325, ¶ 15. Nevertheless, she urges this court to review her assessments under the plain error doctrine.

¶ 6 The State acknowledges the forfeiture, but asserts that the *per diem* monetary credit is a statutorily mandated benefit that cannot be waived. See *People v. Caballero*, 228 Ill. 2d 79, 83 (2008). The State further asserts that defendant's claims may be considered under the plain error doctrine or as a claim of ineffective assistance of counsel, and addresses the merits of her claims.

¶ 7 Defendant's request for the *per diem* monetary credit is not merely requesting credit that is due against her fines, but rather, is raising a substantive issue regarding whether the assessments labeled as fees are fines, and therefore, is subject to forfeiture. See *People v. Brown*, 2017 IL App (1st) 150203, ¶¶ 40-41. Defendant's challenges are not reviewable under the plain error doctrine. *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017). Nor can they be reviewed as a claim of ineffective assistance of counsel. *People v. Rios-Salazar*, 2017 IL App (3d) 150524, ¶ 8 (failure to object to fines and fees is not an error of constitutional magnitude that will support a claim of ineffectiveness), *pet. for leave to appeal granted*, No. 123052 (Mar. 21, 2018). However, the rules of forfeiture and waiver also apply to the State, and where the State fails to argue that defendant forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. Here, although the State acknowledges the forfeiture, it asserts that this court may reach the issues, thereby waiving the forfeiture. We therefore address the merits of defendant's claims. The propriety of the imposition of fines and fees is a question of law which we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 8 First, the parties agree, and we concur, that the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2014)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance and conservation violations, and does not apply to defendant's felony offense. We vacate the \$5 electronic citation fee and direct the clerk of the circuit court to amend the fines, fees and costs order accordingly.

¶ 9 Defendant also contends that she is due monetary credit against several of her assessments. Pursuant to section 110-14 of the Code of Criminal Procedure (Code) (725 ILCS 5/110-14 (West 2014)), a defendant is entitled to have a credit applied against her fines of \$5 for each day she spent in presentence custody. Here, defendant spent 84 days in presentence custody, and is therefore entitled to a maximum credit of \$420.

¶ 10 The credit under section 110-14 can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee, we consider the nature of the assessment rather than its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Our supreme court has defined a "fine" as "punitive in nature" and "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *Id.* (quoting *Jones*, 223 Ill. 2d at 581). A "fee," on the other hand, is "a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *Id.* (quoting *Jones*, 223 Ill. 2d at 582).

¶ 11 Defendant contends that she is entitled to apply her entire \$420 credit against \$1180 in fines that are expressly designated as required to be offset by the monetary credit pursuant to section 110-14 of the Code. These fines include: the \$10 mental health court fine (55 ILCS 5/5-1101(d-5) (West 2014)), the \$5 youth diversion/peer court fine (55 ILCS 5/5-1101(e) (West

2014)), the \$5 drug court fine (55 ILCS 5/5-1101(f) (West 2014)), the \$30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2014)), the \$30 fine to fund juvenile expungement (730 ILCS 5/5-9-1.17 (West 2014)), the \$100 Trauma Center Fund fine (730 ILCS 5/5-9-1.1(b) (West 2014)), and the \$1000 controlled substance fine (720 ILCS 570/411.2(a) (West 2014)). Defendant asks this court to order that the \$420 credit be applied to her fines, and direct the clerk of the circuit court to issue a corrected fines and fees order reflecting that she owes \$1274 after the credit is applied and the electronic citation fee is vacated.

¶ 12 The State agrees that defendant is entitled to apply her \$420 credit against these fines. The State asserts, however, that it is not necessary for this court to amend the fines and fees order because the order correctly indicates that defendant is entitled to monetary credit for 84 days. Nevertheless, the State expresses that it has no objection if this court chooses to direct the clerk of the circuit court to alter the order by including the \$420 credit.

¶ 13 We concur that defendant is entitled to offset her \$1180 in eligible fines with her \$420 in presentence credit. However, we need not reduce the amount due on her fines and fees order because the clerk of the circuit court has been charged with applying the credit. The fines and fees order indicates the total amount due prior to the presentence credit, the number of days of credit, the fines and fees to which the credit applies, and that the allowable credit will be calculated. Given this information, application of the credit and calculation of the final total is a simple ministerial act. Absent some contrary evidence, we will presume that the office of the clerk of the circuit court has fulfilled its duty to follow the order of the circuit court, and we will not interfere in its operations.

¶ 14 Defendant next contends that eight additional assessments labeled as fees are actually fines that should also be subject to offset by her presentence monetary credit. Specifically, defendant challenges the \$15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)), the \$50 court system fee (55 ILCS 5/5-1101(c) (West 2014)), the \$10 arrestees medical costs fee (730 ILCS 125/17 (West 2014)), the \$15 automation fee (705 ILCS 105/27.3a(1) (West 2014)), the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), the \$2 State’s Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)), the \$2 Public Defender records automation fee (55 ILCS 5/3-4012 (West 2014)), and the \$10 probation and court services operations fee (705 ILCS 105/27.3a(1.1) (West 2014)).¹ Defendant acknowledges that her entire \$420 credit should be applied to offset her \$1180 in eligible fines, as noted above, and therefore, her presentence credit is completely exhausted. Nevertheless, she argues that this court should find that the eight additional assessments are fines that would “typically” be subject to offset.²

¶ 15 In response, the State agrees that defendant is entitled to apply presentence credit to the \$15 state police operations fee, the \$50 court system fee, and the \$10 arrestees medical costs fee. The State argues that the remaining five fees are not fines, and thus, not entitled to offset because they compensate the State for costs incurred as a result of prosecuting defendant.

¶ 16 We find that defendant’s challenges to these eight assessments are moot because there is no effectual relief that can be granted by this court. *Harvey*, 2018 IL 122325, ¶¶ 17-19. Defendant has already exhausted her entire \$420 in presentence monetary credit by applying it to

¹ In her point heading, defendant also lists the \$25 court services fee (55 ILCS 5/5-1103 (West 2014)). However, she presents no argument as to this fee, and thus, any challenge is waived. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017).

² Whether the felony complaint filed, automation, document storage, Public Defender records automation, and State’s Attorney records automation assessments are fees or fines is currently pending before the Illinois Supreme Court in *People v. Clark*, 2017 IL App (1st) 150740-U, *pet. for leave to appeal granted*, No. 122495 (Sept. 27, 2017).

her eligible fines. Accordingly, we need not address defendant's claims that she is entitled to apply credit to these additional fees because it is impossible for us to grant her any such relief. *In re Hernandez*, 239 Ill. 2d 195, 201 (2010).

¶ 17 For these reasons, we vacate the \$5 electronic citation fee from the fines, fees and costs order. As the order indicates, defendant is entitled to apply a \$420 credit against her eligible fines. Defendant's amended total assessment should be \$1274. We affirm defendant's conviction and sentence in all other respects.

¶ 18 Affirmed in part; vacated in part.