

2018 IL App (1st) 160419-U
No. 1-16-0419
Order filed September 18, 2018

Second 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-Appellant,)	Cook County.
)	
v.)	No. 14 CR 20893
)	
AAROW BROWN,)	Honorable
)	Alfredo Maldonado,
Defendant-Appellee.)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason concurred in the judgment.
Justice Hyman concurred in part and dissented in part.

ORDER

¶ 1 *Held:* Affirmed in part and vacated in part; we remand to the circuit court to correct the fines, fees, and costs order.

¶ 2 Following a bench trial, defendant Aarow Brown was convicted of delivery of a controlled substance and sentenced to five years' imprisonment. Defendant appeals, challenging one monetary assessment imposed by the trial court and requesting that his presentence custody credit be applied to eligible assessments. For the reasons set forth herein, we vacate one

erroneously assessed fee, remand to the trial court to correct the fine and fees order, and affirm the judgment in all other respects.

¶ 3 Defendant was charged by information with one count of delivery of a controlled substance within 1000 feet of a park and one count of resisting or obstructing a peace officer. Defendant waived his right to a jury trial and the case proceeded to a bench trial. The evidence at trial showed that, on November 8, 2014, a surveillance officer observed defendant engage in multiple hand-to-hand transactions with several men and women who approached him. During the transactions, defendant handed the men and women small blue items in exchange for unknown amounts of money. The officer then observed defendant engage in a hand-to-hand transaction with co-defendant Kenneth Wilson, during which he handed multiple blue items to Wilson in exchange for an unknown amount of money. Co-defendant Wilson then drove away in a black Jeep. Officers stopped Wilson's Jeep and recovered four blue tinted zip-top bags containing a white powdery substance. Nine minutes later, officers approached defendant to apprehend him. After a brief foot-chase, officers were able to detain defendant. One officer testified that he sustained a sprained elbow and required treatment at a hospital after he performed an emergency takedown of defendant. The officers' search of defendant yielded \$118, but no suspect narcotics. The bags recovered from co-defendant's Jeep were tested by a forensic chemist of the Illinois State Police crime lab and found to contain 1.9 grams of heroin.

¶ 4 The court found defendant guilty of the lesser-included offense of delivery of a controlled substance, but not guilty of resisting a peace officer. After a sentencing hearing, the court sentenced defendant to five years' imprisonment. The court also imposed \$2649 of fines, fees, and costs, and credited defendant with 432 days of presentence custody.

¶ 5 Defendant appeals, arguing that the trial court erroneously imposed one assessment against him, and that a number of other assessments should be offset by his presentence custody credit.

¶ 6 Initially, defendant concedes that he did not challenge these assessments in the trial court. Generally, a sentencing issue is forfeited unless the defendant both objects to the error at the sentencing hearing and raises the objection in a postsentencing motion. *People v. Nowells*, 2013 IL App (1st) 113209, ¶ 18. The State, however, asserts that we may nevertheless review the defendant's claims. Because the State does not argue forfeiture on appeal, it has forfeited the claim that the issues raised by defendant are forfeited. *See People v. Reed*, 2016 IL App (1st) 140498, ¶ 13 ("By failing to timely argue that a defendant has forfeited an issue, the State waives the issue of forfeiture"). Further, as the challenged assessments were a part of the trial court's final order, and were not assessed on the circuit clerk's own initiative, this court has jurisdiction over defendant's claims. *See People v. Vara*, 2018 IL 121823, ¶ 23 (appellate courts lack jurisdiction to review a circuit clerk's recording of mandatory fines which were not a part of the circuit court's final judgment). Accordingly, we will address defendant's claims on their merits.

¶ 7 Defendant first contends, and the State agrees, that the trial court erroneously assessed the \$5 Electronic Citation fee (705 ILCS 105/27.3e (West 2016)) against him. We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Glass*, 2017 IL App (1st) 143551, ¶ 21. The statute authorizing the \$5 Electronic Citation fee dictates that it shall be paid by a defendant "in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision." 720 ILCS 105/27.3e (West 2016). As defendant was convicted of a felony offense, this fee was erroneously assessed against him.

Accordingly, we vacate the \$5 Electronic Citation fee. *See People v. Brown*, 2017 IL App (1st) 142877, ¶ 71 (vacating an Electronic Citation fee where defendant was convicted of a felony).

¶ 8 Defendant next contends that certain assessments imposed against him operate as “fines” and should therefore be offset by his presentence incarceration credit.

¶ 9 "Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant." 725 ILCS 5/110-14(a) (West 2016). “The credit for presentence incarceration can only reduce fines, not fees.” *People v. Jones*, 223 Ill. 2d 569, 599 (2006).

¶ 10 Illinois Courts have been struggling with the difference between fines and fees for decades, and we recognize that the Illinois Supreme Court has granted a Petition for Leave to Appeal in *People v. Clark*, 2017 IL App (1st) 150740-U, which we expect will clear up a lot of the confusion. One thing is very clear. The name that the Legislature gives to an assessment in a court order does not necessarily define it as a fine or a fee. "The legislature's label is strong evidence, but it cannot overcome the actual attributes of the charge at issue." *People v. Graves*, 235 Ill. 2d 244, 250 (quoting *People v. Jones*, 223 Ill. 2d at 599-600).

¶ 11 In response to the state’s confusing system of court fines, fees and costs the Illinois Statutory Court Fee Task Force was established and released its report in 2016: *Illinois Court Assessments*.¹ The report is a tribute to the patience and diligence of its authors; but its purpose was not to address which assessments are fees and which are fines. For that, until the Supreme Court decides *Clark*, we still have to rely on precedents established in case law.

¹ http://www.illinoiscourts.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf, cited under the authority of *****case that says we can look at stuff.

¶ 12 Fees have been variously defined as: "[] court fees were intended simply to offset a portion of the cost of the services being provided. Recognizing that the court system benefitted *all* members of society, a majority of funding came from taxpayer revenue. Today, civil litigants and defendants in criminal and traffic proceedings still pay fees designed to cover the costs associated with administering their cases.***Fees are charges imposed on a party to reimburse the cost of a specific court activity or program. Fees are intended to support the operation costs of the justice system as a whole, in addition to reimbursing costs related to litigation, supervision, or incarceration in a particular case. *** Fees are assessed by the Clerk." *Illinois Court Assessments*, p. 7 and 9.

¶ 13 In 2006 the Illinois Supreme Court held that: "A fee is a charge for labor or services, especially professional services." *People v. Jones*, 223 Ill 2d 569, 581 (2006). In likening a fee to a cost, the court explained that: "A cost is a charge or fee taxed by a court such as a filing fee, jury fee, courthouse fee, or reporter fee. ****A fee does not punish a defendant in addition to the sentence he received, but instead is a collateral consequence of the defendant's conviction that is *compensatory in nature*." (Emphasis in the Original, internal citations omitted.) *Jones*, 581.

¶ 14 In *Graves* the Illinois Supreme Court found: " ***the most important factor is whether the charge seeks to compensate the state for *any costs* incurred as the result of prosecuting the defendant. "This is the central characteristic which separates a fee from a fine. A charge is a fee if and only if it is intended to reimburse the state for *some cost* incurred in defendant's prosecution.' " [citations omitted, emphasis added] *People v. Graves*, 235 Ill 2d 244, 250 (2009).

¶ 15 In this sense fees are clearly a different thing: they are the defendant paying the cost of prosecuting him, including maintaining the systems that facilitate that. Fees can't be offset

because they are used to compensate the agencies, and therefore the taxpayers, who maintain the entire court system, parts of which are then used to prosecute the defendant. It costs money to have hardware, software, maintenance, personnel, data input, and data retrieval. It also costs money to have paper, copiers and personnel. So the costs of the agencies' systems are not punishments, they are just the price that gets paid for using the system and those fees attach not only to defendants in criminal cases but with different schedules to litigants in civil cases.

¶ 16 In contrast, fines are "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense (citations omitted). ****Broadly speaking, a 'fine' is a part of the punishment for conviction****" *People v. Jones*, 223 Ill 2d 569, 581-58. "Fines are monetary punishments for infractions, misdemeanors, or felonies. Fines are primarily intended to deter crime and punish offenders." *Illinois Court Assessments*, p. 9.

¶ 17 "[If] the charges in no way compensate the state for the cost of prosecuting a defendant [] they are fines and not fees." *Graves*, 252, citing *People v. Jones*, 223 Ill 2d at 600, 605.

¶ 18 It makes sense that only fines can be offset by a defendant's presentence incarceration credit, since fines are punishments and if the defendant is found guilty and sentenced to prison then his presentence incarceration days can be used to offset some of his sentence to IDOC. It is punishment and the defendant can buy some of his fines and reduce his number of days in his sentence by the days he spent waiting in custody for his sentence to be determined.

¶ 19 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 costs incurred as the result of prosecuting the defendant. *People v. Graves*, 235 Ill. 2d 244, 250 (2009).

¶ 20 Initially, the parties agree that the \$10 Mental Health Court fine (55 ILCS 5/5-1101(d-5) (West 2016)), the \$5 Youth Diversion/Peer Court fine (55 ILCS 5/5-1011(e) (West 2016)), the \$5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2016)), the \$30 Children’s Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2016)), and the \$30 Fine to Fund Juvenile Expungement (730 ILCS 5/5-9-1.17(a) (West 2016)) are offset by defendant’s presentence custody credit. The order assessing fines and fees correctly lists these assessments as “[F]ines offset by the \$5 per-day presentence incarceration credit.” As defendant spent 432 days in presentence custody, and is entitled to a potential maximum of \$2160 of presentence credit, these fines are completely offset by defendant’s presentence credit. 725 ILCS 5/110-14(a) (West 2016). There is, however, nothing to correct. The fines and fees order indicates the total due prior to the presentencing credit, the number of days of credit, and the fines and fees to which the credit does or does not apply. Application of the credit and calculation of the final total is, given this information, 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.

¶ 21 Defendant next contends, the State concedes, and we agree, that the \$15 State Police Operations assessment (705 ILCS 105/27.3a(1.5), (5) (West 2014)) and the \$50 Court System assessment (55 ILCS 5/5-1101(c)(1) (West 2016)) levied against him operate as fines, and are subject to offset by his presentence custody credit. The statute authorizing the \$15 State Police Operations assessment requires that the funds collected by the assessment be deposited in the State Police Operations Assistance Fund, which can be used by the Illinois Department of State Police to “finance any of its lawful purposes or functions,” including homeland security

initiatives. 705 ILCS 105/27.3a (5), (6) (West 2014); 30 ILCS 105/6z-82 (West 2016); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31. This court has found that this assessment “does not reimburse the State for costs incurred in defendant’s prosecution,” and is therefore a fine, which is subject to offset by defendant’s presentence credit. *Millsap*, 2012 IL App (4th) 110668, ¶ 31. Similarly, this court has found that the \$50 Court System assessment is a fine, as the proceeds collected by the assessment are used to finance the court system rather than to reimburse the State for expenses incurred in prosecuting a defendant. See *People v. Brown*, 2017 IL App (1st) 150146, ¶ 37; see also 55 ILCS 5/5-1101(g) (West 2016). Accordingly, the \$15 State Police Operations assessment and the \$50 Court System assessment are completely offset by defendant’s presentence credit.

¶ 22 Defendant next argues that the clerk’s \$190 Felony Complaint filing assessment (705 ILCS 105/27.2a(w)(1)(A) (West 2014)) operates as a fine and should be offset by his presentence credit. Defendant argues that the ascending fee structure mandated by the statute, which ranges from \$30 for minor traffic or ordinance violations to \$190 for felony complaints, indicates that the fee is punitive rather than compensatory, and that the assessment is meant to recoup expenses for the clerk, not to reimburse the State for costs incurred at the result of prosecuting defendant. However, this court recently held that the Felony Complaint filing assessment is a fee, as it is compensatory, and not punitive, in nature. *People v. Bingham*, 2017 IL App (1st) 143150, ¶ 42. Accordingly, the \$190 Felony Complaint assessment is not offset by defendant’s presentence credit.

¶ 23 Defendant further contends that the clerk’s \$15 Automation assessment (705 ILCS 105/27.3a(1), (1.5) (West 2014)) and \$15 Document Storage assessment (705 ILCS 105/27.3c(a)

(West 2016)) levied against him are actually fines, and should be offset by his presentence credit. He contends, citing *Graves*, that these assessments operate as fines because they finance part of the court system and do not seek to compensate the State for any costs incurred as a result of prosecuting a defendant. See *Graves*, 235 Ill. 2d at 250-51. He also argues that the clerk is a neutral, ministerial officer of the court, and has no prosecutorial function. However, this court has previously held that these assessments operate as fees, not fines. *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006). Although *Tolliver* was decided before our supreme court's decision in *Graves*, this court has recently explained that "*Tolliver* used the same framework as was set forth in *Graves* for determining whether a charge is a fee or fine" and found that these assessments are fees. *Brown*, 2017 IL App (1st) 142877, ¶ 81. Accordingly, the clerk's \$15 Automation assessment and \$15 Document Storage assessment are not offset by defendant's presentence credit.

¶ 24 Finally, defendant contends that he is entitled to presentence credit against both the \$2 State's Attorney Records Automation assessment (55 ILCS 5/4-2002.1(c) (West 2016)) and the \$2 Public Defender Records Automation assessment (55 ILCS 5/3-4012 (West 2016)) levied against him. However, this court has found that both the State's Attorney Records Automation assessment and the Public Defender Records Automation assessment constitute fees, and not fines, as they are compensatory instead of punitive in nature. *People v. Reed*, 2016 IL App (1st) 140498, ¶¶16-17 (holding that the assessments were fees because both the State's Attorney and Public Defender would have used their respective office records systems in the course of prosecuting and defending the defendant); see also *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 65 (finding the language of the statutes authorizing each assessment to be nearly identical and

finding no reason to distinguish between them). Defendant argues, citing *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, that these assessments operate as fines because they do not compensate the State for costs associated with any particular defendant.

¶ 25 While we respect our colleague's dissent and his Opinion in *Camacho*, we find that the general characteristic of both the State's Attorney Automation charge and the Public Defender's Automation charge is that the funds are used to maintain the entire automated information systems of those agencies, thus allowing for more efficient use of professional time, and more robust research on a particular defendant. But it is important to note that the particular defendant being researched is only one of thousands in the respective systems, and that the systems of the two agencies benefit the entire court system by providing current information. Neither of these two systems is used exclusively to prosecute or defend a particular defendant. Rather it is their nature to support the efficient operation of the agency's limited equipment and personnel resources. Reimbursing the cost of these two systems effectively supports the entire criminal work of the court. The time it takes to look up one particular defendant does not justify characterizing these charges as fines. ("A charge is a fee if and only if it is intended to reimburse the state for some costs incurred in defendant's prosecution." *Graves*, 250.) These costs reimburse the state for some of the costs – purchasing and maintaining the hardware and software, personnel to operate the equipment, personnel to operate the data: these are fees. The statute creating these fees authorizes the funds to be used for the establishment and maintenance of automated record keeping systems. Establishing them is expensive. Maintaining them is equally expensive. These are fees to keep the systems going. They are not prospective, they are

real-time. And these systems are integral in preparing the prosecution and defense of this defendant as a part of the larger whole system.

¶ 26 Accordingly, these assessments are fees, not fines, and cannot be offset by defendant's presentence credit.

¶ 27 In sum, we vacate the \$5 Electronic Citation fee assessed against defendant. We 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, \$30 Fine to Fund Juvenile Expungement, the \$15 State Police Operations assessment, the \$50 Court System assessment, and the \$2000 Controlled Substance fine (720 ILCS 570/411.2(a)(2) (West 2016)) are fines completely offset by defendant's presentence credit.² However, we find that the clerk's \$190 Felony Complaint filing assessment, \$15 Automation assessment, and \$15 Document Storage assessment; as well as the \$2 State's Attorney Record Automation assessment and the \$2 Public Defender Records Automation assessment, are fees not subject to offset. We remand the matter to the circuit court with instructions to modify the fines, fees, and costs order in accordance this disposition.

¶ 28 Affirmed in part and vacated in part; remanded with directions.

¶ 29 JUSTICE HYMAN, concurring in part and dissenting in part:

¶ 30 I agree with my colleagues that the assessments for felony complaint filing, automation, and document storage, are fees. I disagree with the holding as to the two "records automation" charges (for the Public Defender and State's Attorney). As I previously explained in *People v Camacho*, 2016 IL App (1st) 140604, the language of the relevant statutes demonstrates that these charges are assessed to fund the technology of those two offices, not to compensate for the costs

² Although the parties do not discuss the \$2000 Controlled Substances fine in their briefs, the fines and fees order clearly indicates that it is subject to offset.

of prosecuting a particular defendant. *Id.*, ¶ 50. So, these charges are fines, not fees, and Brown is entitled to presentence credit against them.

¶ 31 As the majority notes, our supreme court has recently accepted a petition for leave to appeal that may clear up this question. See *People v. Clark*, 2017 IL App (1st) 150740-U, *petition for leave to appeal allowed*, *People v. Clark*, No. 122495. The State’s brief in *Clark* concedes that the public defender records automation charge is a fine, rather than a fee. See Appellee’s Brief, *People v. Clark*, No. 122495. The State reasoned (as I did in *Camacho*, 2016 IL App (1st) 140604, ¶ 51) that the charge was punitive because it applied to all defendants, even those who were not represented by the public defender’s office.

¶ 32 The majority also acknowledges that our supreme court authorized a task force to review court assessments, and concluded that Illinois’ system is “byzantine.” Statutory Court Fee Task Force, *Illinois Court Assessments: Findings and Recommendations for Addressing Barriers to Access to Justice and Additional Issues Associated with Fees and Other Court Costs in Civil, Criminal, and Traffic Proceedings* (June 1, 2016), at 16 (found at http://illinoiscourts.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf.) Over time, assessments have passed on more costs of court administration onto litigants; outpaced inflation; and been unevenly assessed between counties, in addition to disproportionately impacting the poor. *Id.* at 16. The report cites one defendant who was ordered to pay a \$150 fine for his DUI conviction . . . and 18 separate assessments totaling \$1625. *Id.* at 13-14. In another case, the defendant paid 25 separate assessments, of which only 8% actually reimbursed the court for the specific costs of the case and general overhead. *Id.* at 18. And since only a “relatively small percentage” of these assessments are ever collected, the original criminal cases are not closed

and continue to follow a defendant as he or she tries to rejoin society. *Id.* at 31. The two-dollar records automation assessments here may seem beneath our notice, but they are part of a system that bleeds a criminal defendant by a thousand cuts.

¶ 33 In response to this report, our legislature has conceived a (miraculously) bipartisan solution, which was just signed by the governor. See Pub. Act 100-987 (eff. July 1, 2019), found at <http://ilga.gov/legislation/publicacts/100/PDF/100-0987.pdf>. Similar to the task force's recommendations, the new statute collects all of the various assessments, including the records automation assessments, into one statute. For each criminal case, the sentencing judge will select one of thirteen "Schedules of Assessment," based on the crime's severity. *Id.*, § 5-10. Each schedule will contain a comprehensive list of every assessment to be included in a sentence, including the records automation assessments. *Id.*, § 15-5. And, of particular interest to me and my colleagues, it settles the "fines versus fees" question by stating outright that credit for time served before sentencing can be applied to the assessments listed in the schedule. *Id.*, § 5-20(a). (It also allows a defendant to petition the court to discharge these assessments through community service. *Id.*, § 5-20(b).) No longer would we be required to parse which assessments can be "paid" through presentence credit as a "fine" rather than a "fee."