

2018 IL App (1st) 160465-U

No. 1-16-0465

Order filed June 13, 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. 14 CR 17715
)	
WILLIAM WRIGHT,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge, presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Cobbs and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The fines, fees, and costs order is modified.

¶ 2 Following a bench trial, defendant William Wright was convicted of unlawful use or possession of a firearm by a felon (720 ILCS 5/24-1.1(a) (West 2014)) and was sentenced to five years' imprisonment. On appeal, defendant challenges certain fines and fees assessed against him. For the reasons below, we order modification of the fines, fees, and costs order.

¶ 3 The evidence at trial established that, on September 24, 2014, police observed defendant standing on the sidewalk with two other people in a residential neighborhood. Defendant looked in the direction of the police and immediately began running, carrying a blue towel, bundled under his arm. The police pursued defendant and lost sight of him for approximately 10 seconds. They detained him shortly thereafter. The police found a blue towel on the ground, next to a garbage bag, containing two handguns and a magazine.

¶ 4 The court found defendant guilty of 6 counts of unlawful use or possession of a firearm by a felon and 12 counts of aggravated unlawful use of a weapon. It merged the convictions, sentenced defendant to five years' imprisonment, and assessed \$599 in fines, fees, and costs.

¶ 5 On appeal, defendant contends that the assessed fines, fees, and costs should be reduced by \$289. He argues that he was erroneously assessed several fines that should be offset by presentence custody credit.

¶ 6 Defendant concedes that he did not raise these challenges to the assessed fines and fees in the trial court. His claims, therefore, are arguably forfeited. See *People v. Hillier*, 237 Ill. 2d 539, 544-45 (2010). He asserts that this issue may be raised for the first time on appeal. See *People v. Woodard*, 175 Ill. 2d 435, 444-48 (1997). The State agrees that defendant's claims are reviewable. The rules of waiver and forfeiture apply to the State. *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000). Therefore, as the State does not argue forfeiture, we will address the merits of defendant's claims. *Id.* We review the propriety of court-ordered fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 7 Defendant asserts that he is entitled to a credit of \$5 for each day he spent in presentence custody to be applied against certain fines assessed against him. A defendant who is incarcerated

on a bailable offense who does not supply bail, and against whom a fine is levied, is allowed a credit of \$5 for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014). This statute applies only to “fines” that were imposed after a conviction and does not apply to any other costs or “fees.” *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). A “fine” is “part of the punishment for a conviction,” whereas a “fee” is assessed to “recoup expenses incurred by the state—to ‘compensat[e]’ the state for some expenditure incurred in prosecuting the defendant.” *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Even if a statute labels a charge as a “fee,” it may still be considered to be a “fine.” *Id.* at 599. Defendant spent 478 days in presentence custody and is, therefore, entitled to up to \$2,390 in presentence custody credit.

¶ 8 Defendant argues that he is entitled to presentence custody credit to be applied towards 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)(1) (West 2014)), the \$190 felony complaint filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the \$15 automation (clerk) fee (705 ILCS 105/27.3a(1) (West 2014)), the \$15 document storage (clerk) fee (705 ILCS 105/27.3c(a) (West 2014)), the \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2014)), and the \$2 State’s Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)). The State concedes that two of these charges, the \$15 State Police operations fee and the \$50 court system fee, are considered fines subject to be offset by defendant’s presentence custody credit. However, the State maintains that the remaining contested charges are “fees” and not “fines.”

¶ 9 We agree with the parties that the \$15 state police operations fee and the \$50 court system fee are considered to be fines and should be offset by presentence custody credit. *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 (concluding that the court systems fee is actually a

fine); *People v. Milsap*, 2012 IL App (4th) 110668, ¶ 31 (“the State Police operations assistance fee is also a fine”). Accordingly, both assessments should be offset by defendant’s presentence custody credit.

¶ 10 The \$2 public defender records automation fee and the \$2 State’s Attorney records automation fee are not fines. “[T]he bulk of legal authority has concluded that both assessments 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.” *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (consolidating cases); see contra *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (finding the assessments are fines, not fees). Accordingly, defendant is not entitled to presentence custody credit toward these assessments.

¶ 11 Similarly, defendant is not entitled to presentence custody credit against the \$190 felony complaint filing fee, the \$15 automation fee, and the \$15 document storage fee. This court has already considered challenges to these assessments and found that they are fees as they “are compensatory and a collateral consequence of defendant’s conviction.” *Tolliver*, 363 Ill. App. 3d at 97. These charges represent part of the costs incurred for prosecuting a defendant and are, therefore, not fines subject to offsetting presentence custody credit. See *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (citing *People v. Graves*, 235 Ill. 2d 244, 250 (2009); *Tolliver*, 363 Ill. App. 3d at 97).

¶ 12 For the reasons stated above, we find that defendant is entitled to presentence custody credit toward the \$15 state police operations and \$50 court system assessments. We direct the

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clerk of the trial court to modify the fines, fees and costs order accordingly. The judgment of the trial court is affirmed in all other respects.

¶ 13 Affirmed as modified.