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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	No. 13 CR 10175
v.	)	
	)	Honorable Thomas M. Davy,
BRITNEY WASHINGTON,	)	Judge presiding.
	)	
Defendant-Appellant.	)	

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JUSTICE GRIFFIN delivered the judgment of the court.  
Justices Harris and Mikva concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's order listed incorrect totals for the amount of fines, fees and other costs to be paid by defendant and the number of days he spent in custody before sentencing. A portion of his presentence custody credit is applied to four fines, thus reducing his total amount of fines and fees owed.

¶ 2 Following a bench trial, defendant Britney Washington was convicted of harassment by telephone (720 ILCS 5/26.5-2(a) (West Supp. 2013)) and was sentenced to two years of probation. On appeal, defendant raises several challenges to the fines and fees order entered by the circuit court. First, he argues the order stated that \$1,064 in fines, fees and costs were to be paid, even though the individual charges assessed in the order only totaled \$634. Defendant also

asserts that even though the order states that he served six months in custody prior to sentencing, the majority of that time was spent on GPS monitoring and he should only receive the \$5-per-day credit toward his fines for the 22 days spent in actual custody. In addition, defendant contends a portion of that monetary credit should apply to several assessments that he represents are fines, though they are labeled as fees on the court's order.

¶ 3 Defendant was charged with aggravated battery, stalking, harassment by telephone and other offenses based on events that occurred between April 2 and May 3, 2013. At trial, the State presented evidence that defendant during that period knowingly and repeatedly used a telephone to call Lucretia Martin, his former girlfriend, with the intent of abusing, threatening or harassing her. Absent prior convictions of a similar nature, harassment by telephone is a Class B misdemeanor. 720 ILCS 5/26.5-5(a) (West Supp. 2013).

¶ 4 The circuit court found defendant guilty of two counts of harassment by telephone. The court sentenced defendant to two years of probation and six months in the Cook County Department of Corrections with that time considered served. The fines and fees order entered by the court indicated defendant was required to pay \$1064 and that he should receive credit for six months spent in custody.

¶ 5 On appeal, defendant contends the \$1064 amount owed pursuant to the circuit court's order was an incorrect mathematical computation, as the various fines and fees that he was charged within the order itself total only \$634. Defendant also argues he is entitled to 22 days of credit for time spent in custody against the fines in the order and the circuit court erred in stating he could apply six months of credit toward those charges. In addition, he asserts several of the

charges imposed in the order can be offset by monetary credit for the 22 days he spent in custody prior to sentencing.

¶ 6 Although defendant did not raise a challenge to his fines and fees in the circuit court, he contends these claims can be raised for the first time on appeal because the statute allowing monetary credit does not indicate at what point such a request must be made, citing *People v. Woodard*, 175 Ill. 2d 435, 444-48 (1997). Defendant also asserts these issues can be reviewed under the plain-error doctrine and that we can modify the circuit court's order pursuant to Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999). See *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22. The State does not respond that defendant has forfeited the ability to challenge these assessments; thus, the State has waived any forfeiture argument. See *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7 (citing *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000)). This court reviews *de novo* the propriety of the circuit court's imposition of fines and fees because issues of statutory interpretation are raised. See *People v. Green*, 2016 IL App (1st) 134011, ¶ 44.

¶ 7 The State concedes the first two points raised by defendant. We accept the State's concessions. First, our review of the fines and fees order confirms that the charges imposed total \$634. Secondly, defendant should receive 22 days of presentencing credit because he was incarcerated from May 3, 2013, until he posted bond on May 24, 2013. Defendant spent the remaining time of his release prior to his trial on GPS monitoring as a condition of his bond. A defendant incarcerated on a bailable offense is entitled to a credit of \$5 for each day he is incarcerated, with that amount to be put toward fines levied against him as part of this conviction. 725 ILCS 5/110-14(a) (West 2012). As defendant acknowledges, the \$5-per-day

credit applies only to days that a defendant “was actually physically incarcerated and not for those days that he was on home confinement.” *People v. Riley*, 2013 IL App (1st) 112472, ¶ 13.

¶ 8 Defendant’s remaining contentions involve the application of that monetary credit to several assessments imposed against him. As explained above, defendant spent 22 days in custody and, accordingly, has accumulated \$110 in credit toward his eligible fines. He contends that presentence custody credit can be applied to various charges because they constitute fines. Under the plain language of section 110-14(a), that credit can be applied only to “fines” and not to those charges that are “fees.” See 725 ILCS 5/110-14(a) (West 2012); *People v. Johnson*, 2011 IL 111817, ¶ 8. Therefore, we set out the difference between a “fine” and a “fee.”

¶ 9 A “fine” is “punitive in nature” and is “a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense.” *Id.*, citing 19 Ill. L. and Prac. *Fines, Forfeitures and Penalties* § 2 (2009). In contrast, a “fee” has been defined as “a charge that seeks to recoup expenses incurred by the state or to compensate the state for some expenditure incurred in prosecuting the defendant.” (Internal quotations omitted.) *People v. Graves*, 235 Ill. 2d 244, 250 (2009) (citing *People v. Jones*, 223 Ill. 2d 569, 581 (2006)). The labeling of a charge as a “fine” or a “fee” by the legislature is not dispositive, and the “most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant.” *Graves*, 235 Ill. 2d at 250-51 (citing *Jones*, 223 Ill. 2d at 600).

¶ 10 Defendant contends, and we agree, that his presentence custody credit can be applied to the \$10 Mental Health Court charge (55 ILCS 5/5-1101(d-5) (West 2012)) and the \$30 Children’s Advocacy Center charge (55 ILCS 5/5-1101(f-5) (West 2012)) imposed against him. This court has found both of those charges to be fines to which a defendant’s presentence

custody credit can be applied. *People v. Anthony*, 2011 IL App (1st) 091528-B, ¶ 32. This court has reached the same conclusion as to the \$5 Youth Diversion/Peer Court charge (55 ILCS 5/5-1101(c) (West 2012)) and the \$5 Drug Court assessment (55 ILCS 5/5-1101(f) (West 2012)). *Graves*, 235 Ill. 2d at 252-53; *People v. Morrison*, 2016 IL App (4th) 140712, ¶ 25. Accordingly, \$50 of defendant's credit is applied to those charges.

¶ 11 As to the six remaining assessments challenged by defendant, we reach the opposite result. Defendant contends his remaining \$60 of presentence custody credit should be applied to one or more of the following assessments: the clerk's \$15 automation charge (705 ILCS 105/27.3a(1) (West 2012)) and \$15 document storage charge (705 ILCS 105/27.3c(a) (West 2012)), the \$25 Court Services (Sheriff) assessment (55 ILCS 5/5-1103 (West 2012)), the \$190 felony complaint filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), and the \$2 State's Attorney and \$2 Public Defender records automation charges (55 ILCS 5/4-2002.1 (West 2012) and 55 ILCS 5/3-4012 (West 2012)). See *People v. Clark*, 2017 IL App (1st) 150740-U, *appeal allowed*, No. 122495 (Sept. 27, 2017).

¶ 12 Defendant argues those charges constitute fines because they apply to every criminal defendants who is found guilty and do not compensate the State specifically for the cost of his prosecution. However, this court has consistently held that those charges are not fines but, rather, are fees and not subject to the application of monetary credit because they are compensatory and are a collateral consequence of a defendant's conviction. *Graves*, 235 Ill. 2d at 250; *Smith*, 2018 IL App (1st) 151402, ¶ 15 (charges are fees if they "represent part of the costs incurred for prosecuting a defendant"); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81; *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42; *People v. Tolliver*, 363 Ill. App. 3d 94, 97

(2006). Defendant acknowledges several other cases that have reached the same result (see, *e.g.*, *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68; *People v. Smith*, 2014 IL App (4th) 112118, ¶¶ 25-31; *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 29-38).

¶ 13 As with the automation and document storage and court services charges, this court has found the felony filing complaint is a fee because it is compensatory and represents a “collateral consequence” of a conviction. *Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42; *Tolliver*, 363 Ill. App. 3d at 97. We further note that defendant was charged the felony filing complaint fee of \$190 because the complaint included various felony counts, even though he was ultimately convicted only of a misdemeanor. See 720 ILCS 5/26.5-5(a), (b) (West Supp. 2013) (absent aggravating circumstances, harassment by telephone is a Class B misdemeanor); see also *Martino*, 2012 IL App (2d) 101244, ¶¶ 34-35 (“logic dictates that a complaint setting out a felony is a felony complaint even if it also sets out a misdemeanor”).

¶ 14 As to the felony complaint charge, defendant contends the assessment is an “arbitrary figure” unrelated to the actual expenses of prosecuting him. He argues it is not imposed to reimburse the State for those costs but instead to “recoup expenses for the clerk.” See 705 ILCS 105/27.2a (w)(1)(A) (West 2012). However, defendant’s argument seems to make the case that charge is a fee to which his credit *would not* apply, not a fine to which it *would* apply, because a fee is defined as a charge that “seeks to recoup expenses incurred by the state.” See *Graves*, 235 Ill. 2d at 250.

¶ 15 The final two charges to which defendant seeks to apply his monetary credit are the \$2 State’s Attorney and \$2 Public Defender records automation charges, again asserting that those assessments are fines because they apply to all defendants and do not reimburse the State for

costs incurred in prosecuting a particular defendant. The statute enacting the State's Attorney records automation charge indicates, in pertinent part, that the \$2 amount is assessed "to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems." 55 ILCS 5/4-2002.1 (West 2012). The statute authorizing the \$2 Public Defender records automation fee uses the same language as quoted above in regard to the Public Defender's office. 55 ILCS 5/3-4012 (West 2012).

¶ 16 Numerous decisions of this court have held those charges are fees, not fines, and thus are not subject to offset by defendant's presentence custody credit. See *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding "no reason to distinguish between the two statutes give their nearly identical language and concluding that those charges are intended to reimburse those offices for expenses); see also, e.g., *People v. Mullen*, 2018 IL App (1st) 152306, ¶¶ 46-48; *People v. Braden*, 2018 IL App (1st) 152295, ¶¶ 50-51; *Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17. But see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (the assessments are fines because they do not compensate the State for any costs associated in prosecuting a particular defendant). When a charge does not include a punitive aspect, it is a fee, not a fine. See *Bowen*, 2015 IL App (1st) 132046, ¶ 63. Therefore, as with the four other charges discussed above, the State's Attorney and Public Defender records automation charges cannot be offset by defendant's credit.

¶ 17 In summary, we have determined the circuit court's order erroneously stated the amount of fines, fees and other charges owed by defendant as \$1064, as the charges that were imposed only totaled \$634. The order also incorrectly reflected the number of days that defendant spent in custody for which he can receive a credit of \$5 per day against his fines.

¶ 18 The following charges are fines to which that credit can be applied: the \$10 Mental Health Court charge, the \$30 Children's Advocacy Center assessment, the \$5 Youth Diversion/Peer Court charge and the \$5 Drug Court assessment. The remaining assessments raised by defendant are fees, not fines and thus are not subject to the application of the credit. Therefore, \$50 of defendant's monetary credit for time spent in custody can be applied to reduce his total amount owed to \$584.

¶ 19 Pursuant to Rule 615(b)(1), we order the clerk of the circuit court to correct the fines and fees order to reflect a total amount due of \$584. Defendant asserts that as a condition of completing his probation, which was scheduled to end in November 2017, he was required to pay the total amount of fines and fees ordered by the circuit court. Defendant asks us to take judicial notice of circuit court records indicating that he successfully completed his probation and that \$1064 was withheld for "fines" from his bond. Defendant therefore argues he should receive a refund of his overpayment, pending the outcome of this appeal. Accordingly, we further order the clerk of the circuit court to refund any overpayment, as appropriate.

¶ 20 Affirmed; fines and fees order corrected.