

2018 IL App (1st) 160627-U

No. 1-16-0627

Order filed July 27, 2018

Fifth 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 6458
)	
ANTONIO JAMES,)	Honorable
)	Thaddeus L. Wilson,
Defendant-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's fines and fees order amended to vacate an improper fee and apply a \$65 credit against two assessments; claim that additional fees constitute fines entitled to monetary credit is without merit.

¶ 2 Following a bench trial, defendant Antonio James was convicted of armed robbery with a firearm and sentenced to 21 years' imprisonment. The trial court also assessed defendant fines, fees and court costs totaling \$689. On appeal, defendant does not challenge his conviction or term of imprisonment, but contends that one fee was improperly assessed and should be vacated.

Defendant also contends that monetary credit for the days he spent in presentencing custody should be applied against several of the assessments. We vacate one fee, apply a credit of \$65 against two assessments, and affirm defendant's conviction and sentence in all other respects.¹

¶ 3 Because defendant does not challenge his 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 two counts of armed robbery with a firearm, two counts of aggravated unlawful restraint, and three counts of aggravated unlawful use of a weapon. The evidence established that on March 4, 2014, defendant entered a Radio Shack store in Chicago and locked the door behind him. Defendant approached an employee, Shannon Vivians, with a gun in his hand and ordered her to remove the money from the cash drawer. Defendant then told Vivians to enter the back storeroom where another employee, Chantia Kindle, was working. He ordered the women to open the storage safe. Defendant handed each woman a large garbage bag and told them to fill the bags with the merchandise from the safe. While doing so, Kindle placed a counterfeit merchandise box that contained a LoJack tracking device inside the garbage bag. Defendant instructed the women to place the filled bags by the back door, enter the bathroom, and not to come out until after he left. When the women heard the back door close they exited the bathroom and called the police. Within an hour, the tracking device led police to a house where the bags of merchandise and gun were recovered. Police brought Kindle to the house where she identified the merchandise and gun. Kindle observed a photograph of defendant which was hanging on a wall inside the house and immediately identified him as the armed robber. Two weeks later,

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

defendant was arrested during a traffic stop. The next day, both women identified defendant in a lineup.

¶ 4 The trial court found defendant guilty of all counts. At sentencing, the court merged all of the counts into one count of armed robbery with a firearm, and sentenced defendant to the minimum term of 21 years' imprisonment. The court awarded defendant 700 days of credit for time served in presentencing custody. The court also assessed defendant \$689 for various fines, fees, and court costs.

¶ 5 On appeal, defendant contends that the \$5 Electronic Citation Fee must be vacated because it was erroneously assessed. Defendant also contends that he is entitled to a credit of \$50 against four fines which are designated as subject to offset by the presentence monetary credit. Defendant further argues that he is entitled to additional monetary credit against several assessments that are labeled as fees, but are actually fines.

¶ 6 Defendant acknowledges that he did not preserve these issues for appeal because he did not challenge the assessments in the trial court. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). He argues, however, that this court may modify the fines and fees order pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999). Defendant further asserts that he may request the *per diem* monetary credit at any time and that his right to the credit cannot be forfeited. See *People v. Woodard*, 175 Ill. 2d 435, 444-48 (1997). In addition, he urges this court to vacate the one fee under the second prong of the plain error doctrine. Alternatively, defendant asks this court to review all of his assessments under a claim of ineffective assistance of counsel based on counsel's failure to object to the erroneous charges at sentencing.

¶ 7 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 his claims.

¶ 8 Defendant's request for the *per diem* monetary credit is not merely requesting credit that is due against his 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 we reach the merits of his claims under Rule 615(b). *People v. Grigorov*, 2017 IL App (1st) 143274, ¶¶ 13-14. Similarly, defendant cannot avoid forfeiture by alleging 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.

¶ 9 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.

¶ 10 Defendant also contends that he is due monetary credit against several of his 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 his fines of \$5 for each day he spent in presentence custody. Here, defendant spent 700 days in presentence custody, and is therefore entitled to a maximum credit of \$3,500.

¶ 11 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).

¶ 12 Defendant contends, and the State agrees, that he is entitled to a \$50 credit against four fines which are expressly designated as required to be offset by the monetary credit pursuant to section 110-14 of the Code. Defendant argues that he is due credit for the \$30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2014)), 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)), and the \$5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2014)).

¶ 13 We acknowledge that defendant is entitled to offset these four fines with his presentence credit. However, we need not reduce his amount due 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 Next, the parties agree, and we concur, that defendant is due full credit for the \$15 State Police Operations Fee (705 ILCS 105/27.3a(1.5) (West 2014)) and the \$50 Court System Fee (55 ILCS 5/5-1101(c) (West 2014)). The parties agree that, although these two charges are labeled as fees, this court previously held that they are fines because they do not compensate the State for expenses incurred in the prosecution of defendant, and thus, they are subject to offset by the monetary sentencing credit. *People v. Wynn*, 2013 IL App (2d) 120575, ¶¶ 13, 17. We direct the clerk of the circuit court to amend the fines, fees and costs order to reflect a \$15 credit for the State Police Operations Fee and a \$50 credit for the Court System Fee.

¶ 15 Defendant next contends that he is entitled to credit against the \$190 Felony Complaint Filed fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the \$15 Automation fee (705 ILCS 105/27.3a(1) (West 2014)), and the \$15 Document Storage fee (705 ILCS 105/27.3c(a) (West 2014)). Defendant argues that these assessments are fines rather than fees because they do not

reimburse the State for the costs incurred in prosecuting a defendant, but instead, finance a component of the court system for the general costs of litigation.²

¶ 16 This court has already considered challenges to these assessments and has determined that they are fees, not fines, and therefore, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42 (relying on *Tolliver* and finding the \$190 Felony Complaint Filed fee to be a fee), *pet. for leave to appeal granted*, No. 122008 (May 24, 2017); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding that the Document Storage fee and Automation fee are fees not subject to offset by presentence incarceration credit). See also *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the Automation and Document Storage fees are fees rather than fines). We adhere to the reasoning in our prior decisions and find that these assessments are fees that compensate the clerk's office for expenses incurred in the prosecution of a defendant. As such, defendant is not entitled to offset these fees with his presentence custody credit.

¶ 17 Finally, defendant contends that he is entitled to credit against the \$2 State's Attorney Records Automation fee (55 ILCS 5/4-2002.1(c) (West 2014)) and the \$2 Public Defender Records Automation fee (55 ILCS 5/3-4012 (West 2014)). Defendant points out that these assessments apply to all defendants who are found guilty of an offense, and that the purpose of the assessments is to discharge the expenses associated with establishing and maintaining

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).

automated record keeping systems. He argues that the assessments therefore do not compensate the State for prosecuting a particular defendant, and thus, they constitute fines rather than fees.

¶ 18 This court has repeatedly found that the \$2 State's Attorney Records Automation fee and the \$2 Public Defender Records Automation fee are compensatory in nature because they reimburse the State for its expenses related to maintaining its automated record-keeping systems. *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 (Public Defender assessment is a fee, not a fine); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30 (State's Attorney assessment is a fee, not a fine). In *Reed*, we explained that the State's Attorney's Office would have utilized its automated record-keeping systems in prosecuting the defendant when it filed charges with the clerk's office and made copies of discovery that were tendered to the defense. *Reed*, 2016 IL App (1st) 140498, ¶ 16. We further explained that, because the defendant was represented by a public defender, counsel would have used the public defender's office record systems in representing the defendant. *Id.* ¶ 17. Consequently, we concluded that the assessments were fees, not fines, and thus not subject to offset by the *per diem* credit. *Id.* ¶¶ 16-17; *Green*, 2016 IL App (1st) 134011, ¶ 46; *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *Rogers*, 2014 IL App (4th) 121088, ¶ 30; *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56 (finding the assessments are fines because they do not compensate the State for the costs associated with prosecuting a particular defendant).

¶ 19 We agree with the holdings in *Reed*, *Green*, *Bowen*, and *Rogers*, and similarly conclude that the State's Attorney Records Automation fee and the Public Defender Records Automation

fee are fees, not fines. Accordingly, defendant is not entitled to offset these fees with his presentence custody credit.

¶ 20 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 a \$50 credit against his assessments for the Children's Advocacy Center, Mental Health Court, Youth Diversion/Peer Court and Drug Court fines. We direct the clerk of the circuit court to further amend that order to reflect a credit of \$65 to offset the \$15 State Police Operations Fee and the \$50 Court System Fee. Defendant's amended total assessment should be \$569. We affirm defendant's convictions and sentences in all other respects.

¶ 21 Affirmed in part; vacated in part; fines and fees order corrected.