

2018 IL App (1st) 160732-U

No. 1-16-0732

Order filed May 3, 2018

Fourth 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 C2 20033
)	
MAREK CZARNECKI,)	Honorable
)	Jeffrey L. Warnick,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's fines and fees order is amended to vacate an improper fee; the claim that additional fees constitute fines entitled to monetary credit is without merit.

¶ 2 Following a jury trial, defendant Marek Czarnecki was convicted of burglary and sentenced to 12 years with the Illinois Department of Corrections as a Class X offender. The trial court also assessed defendant fines, fees and court costs totaling \$669. On appeal, defendant does not challenge his conviction or term of imprisonment, but contends that monetary credit for the

days he spent in presentencing custody should be applied against several of the assessments. Defendant also argues that one fee was improperly assessed and should be vacated. We modify the fines and fees order.

¶ 3 Since 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 one count of burglary for breaking into a detached garage at a residence. Police arrived while the burglary was in progress and arrested defendant when he exited the garage. The jury found defendant guilty. The trial court sentenced defendant to 12 years' imprisonment as a Class X offender, and awarded him 843 days of credit for time served in presentencing custody. The court also assessed defendant \$669 for various fines, fees and court costs.

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

¶ 5 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). Nevertheless, he urges this court to review his assessments under either the plain error doctrine or, alternatively, as a claim of ineffective assistance of counsel based on counsel's failure to object to the erroneous charges at sentencing. The State has not acknowledged defendant's forfeiture, nor responded to this part of his argument.

¶ 6 The incorrect imposition of a fine, which is part of a sentence, affects a defendant's substantial rights, and therefore, may be reviewed under the second prong of the plain error doctrine. *People v. Cox*, 2017 IL App (1st) 151536, ¶ 102. In addition, trial counsel's failure to ensure that the fines and fees imposed on defendant were authorized by statute, or that defendant received the full monetary credit to which he was entitled, constitutes ineffective assistance of counsel. *Cox*, 2017 IL App (1st) 151536, ¶ 107. Alternatively, we point out that the rules of forfeiture and waiver also apply to the State, and where, as here, the State fails to argue that defendant has forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. 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.

¶ 7 Defendant first contends that the trial court failed to apply 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 of Criminal Procedure (Code) (725 ILCS 5/110-14 (West 2012)). He argues that he is due credit for the \$30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2012)), the \$10 Mental Health Court fine (55 ILCS 5/5-1101(d-5) (West 2012)), the \$5 Youth Diversion/Peer Court fine (55 ILCS 5/5-1101(e) (West 2012)), and the \$5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2012)).

¶ 8 The State agrees that defendant is entitled to offset these four fines with his presentence credit. It points out, however, that the last page of the fines and fees order correctly indicates that defendant served 843 days in custody, and states "[a]llowable credit toward fine will be calculated." The State asserts that this court need not reduce the amount due by \$50 because the clerk of the circuit court will apply the credit.

¶ 9 We agree with the State. 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.

¶ 10 Defendant next contends that he is entitled to have an additional \$244 in presentence monetary credit applied against five assessments labeled as fees which are actually fines. Pursuant to section 110-14 of the Code, a defendant is entitled to have a \$5 credit applied against his fines for each day he spent in presentence custody. Here, defendant spent 843 days in presentence custody, and is therefore entitled to a maximum credit of \$4215.

¶ 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.) *Graves*, 235 Ill. 2d at 250 (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.” *Graves*, 235 Ill. 2d at 250 (quoting *Jones*, 223 Ill. 2d at 582).

¶ 12 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 2012)) and the \$2 Public Defender Records

Automation fee (55 ILCS 5/3-4012 (West 2012)). 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 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.

¶ 13 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. *Reed*, 2016 IL App (1st) 140498, ¶ 17. Consequently, we concluded that the assessments were fees, not fines, and thus not subject to offset by the *per diem* credit. *Reed*, 2016 IL App (1st) 140498, ¶¶ 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).

¶ 14 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.

¶ 15 Defendant next contends that he is entitled to credit against the \$25 Document Storage fee (705 ILCS 105/27.3c(a) (West 2012)), the \$190 Felony Complaint Filed fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), and the \$25 Automation fee (705 ILCS 105/27.3a(1) (West 2012)).¹ 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); *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

¹ In his opening brief, defendant also argued that credit should offset the \$25 Court Services (Sheriff) fee (55 ILCS 5/5-1103 (West 2012)). However, he withdrew that argument in his reply brief.

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*, No. 122495.

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 the \$5 Electronic Citation fee (705 ILCS 105/27.3e (West 2012)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance, and conservation violations, and does not apply to his felony offense. The State has not responded to this argument. We concur with defendant that the fee was erroneously assessed. We therefore vacate the \$5 Electronic Citation fee and direct the clerk of the circuit court to amend the fines, fees and costs order accordingly.

¶ 18 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. Defendant's amended total assessment should be \$614. We affirm defendant's conviction and sentence in all other respects.

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