2018 IL App (1st) 161424-U

No. 1-16-1424

Order filed July 11, 2018

Third Division

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. 15 CR 15729
	)	
TRAVELLIS WILLIAMS,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Mittimus corrected to vacate one of defendant's two convictions for possession of a controlled substance under the one-act, one-crime rule where defendant committed one act of possession of heroin; fines and fees order amended to vacate two fees and apply a $15 credit against another fee; claim that additional fees constitute fines entitled to monetary credit is without merit.

¶ 2 Following a stipulated bench trial, defendant Travellis Williams was convicted of possession of a controlled substance and sentenced to four years' imprisonment. On appeal, defendant contends, and the State agrees, that his mittimus incorrectly indicates that he was

convicted of two counts of possession of a controlled substance, and that one conviction must be vacated under the one-act, one-crime rule where he committed only one act of possession. The parties also agree that defendant's fines and fees order should be amended by vacating two fees and applying a $15 credit. In addition, defendant contends that he is entitled to apply presentence monetary credit against several assessments labeled as fees that are actually fines. We vacate one conviction from the mittimus, vacate two fees, apply a $15 credit to the fines and fees order, and affirm defendant's conviction and sentence in all other respects.

¶ 3 Defendant was charged with two counts of possession of a controlled substance with intent to deliver between 1 and 15 grams of heroin on September 2, 2015. Count 1 alleged that defendant committed the offense within 1,000 feet of a church, and Count 2 alleged that he committed the offense in a public park.

¶ 4 Defendant filed a motion to suppress the heroin. At the hearing on his motion, Chicago police officer Lesch testified that on September 2, he and his partner, Officer Gomez, were conducting a narcotics surveillance at Horan Park, in the area of 3021 W. Van Buren Street. Lesch observed defendant walk into the park next to the basketball courts. Defendant walked to a large tree located between the basketball courts and the play lot. Defendant removed a small white sock from his right rear pants pocket and placed it at the base of the tree. Defendant opened the sock, retrieved a small item from inside, and placed the small item in his crotch area.

¶ 5 Defendant walked to the hoop on the basketball court, about 10 feet away from the tree. Defendant stood stationary in that location while another man played basketball. From a distance of 150 feet, Lesch observed defendant engage in three separate narcotics transactions within 10 minutes. In each instance, an unknown man walked into the park and approached defendant on

the basketball court. After a brief conversation, each man handed defendant money in exchange for a small item defendant retrieved from the crotch area inside his pants. Following each transaction, the unknown man walked away from the area. Lesch could only describe the men as tall, slender, older men. Lesch could not tell how much money each man tendered, nor could he see the small items defendant handed to the men. None of the three unknown men were detained.

¶ 6 After the third transaction, Lesch and Gomez approached defendant in their unmarked police vehicle. Gomez detained defendant while Lesch walked to the tree and recovered the white sock. Inside the sock was a clear plastic bag which contained 13 smaller pink Ziploc bags, each containing suspect heroin. The officers arrested defendant. During a custodial search Gomez recovered $102 from defendant's person, and four small pink Ziploc bags containing heroin that fell to the ground from inside defendant's pants leg.

¶ 7 The trial court denied the motion to suppress. Immediately thereafter the parties proceeded with a stipulated bench trial. The parties agreed to adopt Lesch's testimony from the suppression hearing. The State presented a stipulation that Gomez would testify to essentially the same facts as Lesch. In addition, Gomez would testify that directly across the street, approximately 150 feet from where the transactions occurred, was Emanuel Baptist Church.

¶ 8 The State presented another stipulation that Gwendolyn Brister, a forensic chemist with the Illinois State Police crime laboratory, tested the four items recovered from defendant and found them positive for 1.4 grams of heroin. Brister also tested 5 of the 13 items recovered from the white sock and found them positive for 3.1 grams of heroin.

¶ 9 Following arguments, the trial court found "that the State proved the defendant guilty beyond a reasonable doubt of possession of a controlled substance, not possession with intent to

deliver." The court sentenced defendant to an extended term of four years' imprisonment. The court awarded defendant 233 days for time served, and assessed him $1,004 in various fines, fees and court costs.

¶ 10 On appeal, defendant contends, and the State agrees, that his mittimus incorrectly indicates that he was convicted of two counts of possession of a controlled substance. The parties agree that one conviction must be vacated under the one-act, one-crime rule where defendant was convicted of only one act of possession of heroin.

¶ 11 Defendant acknowledges that he did not preserve this error for review because he did not raise it before the trial court. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). He asks this court to review the issue under the plain error doctrine. The State does not acknowledge the forfeiture, and agrees that the error should be corrected. Our supreme court has repeatedly found that a one-act, one-crime violation is reviewable under the second prong of the plain error doctrine because it affects the integrity of the judicial process. *People v. Coats*, 2018 IL 121926, ¶ 10. Accordingly, we will consider the issue.

¶ 12 Whether a conviction should be vacated under the one-act, one-crime doctrine is a question of law which we review *de novo*. *Id.* ¶ 12. Under this rule, a defendant cannot be convicted of multiple offenses that are based on precisely the same single physical act. *Id.* ¶ 11 (citing *People v. King*, 66 Ill. 2d 551, 566 (1977)). Where a defendant is convicted of two such offenses, the conviction for the less serious offense must be vacated. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 13 Here, the parties agree, and we concur, that the record shows that defendant was convicted of one count of possession of a controlled substance for the single act of possessing the

heroin. Defendant was charged with two counts of possession of a controlled substance, specifically, 1 to 15 grams of heroin, with intent to deliver. One count charged him with committing the offense within 1,000 feet of a church, and the other count charged him with committing the offense in a public park. The separate counts were not based on separate acts of possession, but instead, on his possession with intent to deliver the same heroin in proximity to two locations provided for in the statute. 720 ILCS 570/407(b)(1) (West 2014). The trial court found that the State failed to prove defendant's intent to deliver, and therefore, found him guilty of the lesser included offense of simple possession of the heroin. The mittimus incorrectly shows two identical counts of possession of heroin. Accordingly, we vacate defendant's conviction for possession of a controlled substance under Count 2, and direct the clerk of the circuit court to issue a corrected mittimus.

¶ 14 Defendant next contends that his fines and fees order must be amended. Defendant contends that two fees must be vacated because they were erroneously assessed. He further argues that he is entitled to apply presentence monetary credit against several assessments that are labeled as fees, but are actually fines.

¶ 15 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 review his claims

under the second prong of the plain error doctrine. The State does not acknowledge the forfeiture, and instead, addresses the merits of defendant's claims.

¶ 16 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. 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. Thus, we 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.

¶ 17 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.

¶ 18 Similarly, the parties agree, and we concur, that the $5 Court System Fee (55 ILCS 5/5-1101(a) (West 2014)) must be vacated as that fee only applies to violations of the Illinois Vehicle Code. Here, defendant was not convicted of a violation of the Vehicle Code. We vacate the $5

Court System Fee and direct the clerk of the circuit court to further amend the fines, fees and costs order accordingly.

¶ 19 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 233 days in presentence custody, and is therefore entitled to a maximum credit of $1,165.

¶ 20 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).

¶ 21 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)). Although this assessment is labeled as a fee, this court previously held that it is a fine because it does not compensate the State for an expense incurred in the prosecution of defendant, and thus, it is subject to offset by the monetary sentencing credit. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31. 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.

¶ 22 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)) and the $15 Document Storage fee (705 ILCS 105/27.3c (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.[1]

¶ 23 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 is a fee not subject to offset by presentence incarceration credit). See also *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the Document Storage fee is a fee rather than a fine). 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.

¶ 24 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

[1] 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).

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.

¶ 25 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.* at ¶ 17. Consequently, we concluded that the assessments were fees, not fines, and thus not subject to offset by the *per diem* credit. *Id.* at ¶¶ 16-17; *Green*, 2016 IL App (1st) 134011, ¶ 46; *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *Rogers*, 2014 IL App (4th) 121088, ¶ 30; c*ontra 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).

¶ 26 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.

¶ 27 For these reasons, we vacate the $5 Electronic Citation Fee and the $5 Court System Fee from the fines, fees and costs order. We direct the clerk of the circuit court to further amend that order to reflect a credit of $15 to offset the State Police Operations Fee. Including the fines already indicated as subject to offset on the fines and fees order, defendant's amended total amount due should be $429. We affirm defendant's conviction and sentence in all other respects.

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