2018 IL App (1st) 162120-U

No. 1-16-2120

Order filed August 20, 2018

First 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 2561
	)	
JOAQUIN CONTRERAS,	)	Honorable
	)	Maura Slattery Boyle,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: We remand to the trial court to vacate two of defendant's convictions under the one-act, one-crime doctrine and order his fines, fees and costs order corrected.

¶ 2 Following a bench trial, defendant Joaquin Contreras was convicted of three counts of aggravated battery based on great bodily harm (720 ILCS 5/12-3.05(a)(1) (West 2014)), permanent disfigurement (720 ILCS 5/12-3.05(a)(1) (West 2014)), and with use of a dangerous weapon (720 ILCS 5/12-3.05(f)(1) (West 2014)), and sentenced to seven years' imprisonment.

On appeal, defendant contends that two of the three convictions for aggravated battery violate the one-act, one-crime rule, and challenges various fines and fees. We agree. Because we cannot determine which of the offenses is more serious, we remand the cause for the trial court to make that determination and vacate the less serious convictions. We order the fines, fees and costs order corrected.

¶ 3 In pertinent part, defendant was charged with three counts of aggravated battery (1) resulting in great bodily harm, (2) resulting in permanent disfigurement, and (3) with use of a deadly weapon other than a firearm. All three counts alleged that defendant "stabbed" the victim, Luis Alberto Colderon "about the body."

¶ 4 During opening statements, the State argued, in relevant part, the victim, Colderon, was engaged in sexual relations with a woman with whom defendant was romantically involved. Defendant was angry about Colderon's relationship with the woman and went to Colderon's home armed with a knife. Once at the residence, defendant stabbed Colderon four times.

¶ 5 Colderon testified that, on October 11, 2014, he lived on the first floor of a three-story building on South Talman Avenue. He had a relationship with a woman he knew only as "Davy," in which once or twice a week they engaged in sexual intercourse and he gave her money. That night, Davy came to Colderon's home and the two went to Colderon's bedroom. While in the bedroom, Colderon heard the window break in his kitchen. He started getting dressed, and someone then broke his bedroom window. Colderon could not see who broke the window from his bedroom. He went outside and saw a man, later identified as defendant, whom he had never seen before.

¶ 6 Colderon noticed that defendant was holding a knife with a four to five inch blade. In Spanish, defendant said, "alright m***," and walked towards Colderon. Colderon tried to protect himself from the knife, and the two men started "wrestling" and "tussling." Colderon did not remember much, but testified that defendant stabbed him "just about right away."

¶ 7 After a few minutes, Colderon's neighbors Margarito Martinez, Melochor Reyna, Salvador Nunez, and Jorge Santamaria arrived and hit defendant over the head in order to free Colderon. Colderon was not in possession of a weapon.

¶ 8 Colderon was subsequently transported to the hospital. He was bleeding from his stomach and was treated where the knife "kind of touched" his kidney and liver. Colderon was in the hospital for two days. In court, he showed the trial court the scars from where he had been stabbed, including his right side near his upper chest, his right side above the breast, and the upper area of his right shoulder. Colderon identified defendant in a photographic array.

¶ 9 Margarito Martinez testified that, on the night in question, he was outside his residence, which was next door to Colderon's home. He was with Nunez and Santamaria. They saw a man walk toward Colderon's building and, shortly thereafter, heard the sound of breaking glass. Martinez went with Nunez and Santamaria to Colderon's home and saw the man arguing with Colderon. Colderon was "hugging" the man from behind. The man was making a backwards stabbing motion with his right hand, and Colderon was saying "he is stabbing me." Martinez hit the man with a stick, and the man left with a woman following behind him. Colderon was bleeding from his torso. Martinez later spoke with police and viewed a photo array, but could not identify anyone.

¶ 10 Salvador Nunez testified for the defense. He testified to the same version of events as Martinez.

¶ 11 The trial court subsequently found defendant guilty of "the remaining great bodily harm and aggravated body [*sic*]." At the posttrial hearing on defendant's motion for a new trial, the court stated, "The court did find him guilty in regards to the aggravated battery." The court subsequently proceeded to sentence defendant to "seven years Illinois Department of Corrections followed by two years mandatory supervised release." The record is unclear whether the court intended to impose sentence on each aggravated battery count. In any event, there is no indication in the record that the court merged the counts, and defendant's mittimus reflects separate findings of guilt and sentences for each of the three aggravated battery counts.

¶ 12 On appeal, defendant first asserts, and the State concedes, that two of his convictions for aggravated battery violate the one-act, one-crime rule. The parties agree that defendant failed to preserve this issue by objecting before the trial court and raising it in his posttrial motion. However, as the parties correctly contend, we may review one-act, one-crime violations under the second prong of the plain error doctrine, as violations affect the integrity of the judicial process and result in a surplus sentence. *People v. Price*, 2011 IL App (4th) 100311, ¶ 25; *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

¶ 13 "The application of the one-act, one-crime principle is a question of law, which we review *de novo*." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). The one-act, one-crime rule prohibits multiple convictions arising out of the same physical act. See *People v. Almond*, 2015 IL 113817, ¶ 47; *People v. King*, 66 Ill. 2d 551, 566 (1977). In the event that more than one conviction could be supported by the defendant's conduct, the indictment must indicate that the

State intends to treat such conduct as multiple acts warranting multiple convictions. *People v. Crespo*, 203 Ill. 2d 335, 342-45 (2001). Counts charging a defendant with the same conduct under different theories of criminal culpability are insufficient to differentiate the charges. See *id.* at 342. Where the same physical act forms the basis for two separate offenses charged, sentence is imposed on the most serious offense. *People v. Cardona*, 158 Ill. 2d 403, 411 (1994).

¶ 14 Here, the record reflects that defendant stabbed Colderon multiple times. Our supreme court has held that "each strike or blow to the victim could support a separate finding of guilt for aggravated battery," but only "if the charging document reflects the State's intent to apportion the accused's conduct." *In re Samantha V.*, 234 Ill. 2d 359, 378 (2009) (citing *Crespo*, 203 Ill. 2d at 345). The parties correctly agree that the State did not apportion defendant's conduct separately, where it charged defendant with aggravated battery causing great bodily harm, aggravated battery causing permanent disfigurement, and aggravated battery with use of a deadly weapon, all premised on the same conduct: stabbing Colderon about the body. Thus, defendant's conduct, as charged, cannot support multiple sentences.

¶ 15 Accordingly, we find that two of defendant's sentences for aggravated battery should be vacated pursuant to the one-act, one-crime doctrine, and defendant should be sentenced on the most serious offense. See *Cardona*, 158 Ill. 2d at 411. Where, as here, the punishments and culpable mental states are identical, the trial court determines which is the most serious offense. *Samantha V.*, 234 Ill. 2d at 379-80; see also 720 ILCS 5/12-3(a) (the mental element of a battery offense is knowing conduct); see also 720 ILCS 5/12-3.05(h) (West 2014) (aggravated battery resulting in great bodily harm or permanent disfigurement and with use of a deadly weapon are

Class 3 felonies). We therefore remand this matter to the trial court to determine the most serious aggravated battery offense and impose sentence on that offense.

¶ 16 Next, defendant challenges various fines and fees imposed by the trial court. Defendant again concedes that he did not preserve these issues before the trial court, but argues that fines and fees issues are reviewable under the second prong of the plain error doctrine and Illinois Supreme Court Rule 615(b), and that claims regarding presentence incarceration credit cannot be waived or forfeited. The State notes defendant forfeited his fines and fees claims by failing to preserve them below, but agrees that presentence incarceration credit cannot be waived. It makes no argument concerning defendant's forfeiture of claims regarding fees to which the per diem credit does not apply. Thus, we will review the merits of defendant's contentions. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (the rules of waiver and forfeiture apply to the State). We review *de novo* the propriety of court-ordered fines and fees. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 17 The parties agree that the $5 electronic citation fee and $5 court system fee should be vacated. We agree, and vacate the $5 electronic citation fee because defendant was not convicted in "any traffic, misdemeanor, municipal ordinance, or conservation case." See 705 ILCS 105/27.3e (West 2016). Likewise, we vacate the $5 court system fine because defendant was not convicted of a violation of the Illinois Vehicle Code or a similar municipal ordinance. See 55 ILCS 5/5-1101(a) (West 2016).

¶ 18 Next, defendant argues that several assessed fees are instead fines that should be offset by his $5 per day presentence incarceration credit.

¶ 19 The trial court imposed on defendant $524 in fines, fees and costs. Section 110-14 of the Code of Criminal Procedure of 1963 (the Code) provides that a defendant is entitled to a credit of $5 toward his fines for each day he was incarcerated prior to sentencing. 725 ILCS 5/110-14(a) (West 2016). Under the plain language of the Code, "the credit applies only to 'fines' that are imposed pursuant to a conviction, not to any other court costs or fees." *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). Whether an assessment is a fine or a fee depends on its purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Fees are "intended to reimburse the state for a cost incurred in the defendant's prosecution," while fines are punitive in nature and "part of the punishment for a conviction." *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63 (citing *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). The record reflects that defendant was entitled to credit for 618 days for presentence incarceration. He therefore has $3,090 (618 days multiplied by $5) credit available toward his fines.

¶ 20 Defendant argues, and the State concedes, that the $15 State Police operations charge (705 ILCS 105/27.3a(1.5) (West 2016)) is a fine that should be offset by defendant's presentence incarceration credit. We agree that this assessment is a fine because it does not reimburse the State for expenses incurred in defendant's prosecution. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 ("the State Police Operations Assistance fee does not reimburse the State for costs incurred in defendant's prosecution").

¶ 21 Defendant next asserts that his presentence incarceration credit should apply to the $190 felony complaint clerk charge (705 ILCS 105/27.2a(w)(1)(A) (West 2016)), the $25 clerk automation charge (705 ILCS 105/27.3a(1) (West 2016)), the $25 court services (sheriff) assessment (55 ILCS 5/5-1103 (West 2016)),and the $25 document storage charge (705 ILCS

105/27.3c(a) (West 2016)). We previously determined these assessments are fees, as they are "compensatory and a collateral consequence of conviction." *People v. Tolliver,* 363 Ill. App. 3d 94, 97 (2006). Defendant is not entitled to a presentence incarceration credit against the felony complaint clerk charge, the clerk automation charge, the court services assessment or the document storage charge.

¶ 22 Defendant also argues that his presentence incarceration credit should apply to the $2 public defender records automation charge (55 ILCS 5/3-4012 (West 2016)), and the $2 State's Attorney's records automation charge (55 ILCS 5/4-2002.1(c) (West 2016)) because they are fines, rather than fees intended to reimburse the State and public defender's office for costs associated with prosecuting and defending defendant.

¶ 23 In *People v. Brown*, 2017 IL App (1st) 142877, ¶¶ 76, 78, this court determined that the $2 public defender's records automation and the $2 State's Attorney records automation assessments are fees. We acknowledge that *People v. Camacho,* 2016 IL App (1st) 140604, ¶¶ 47-56, concluded that these charges are fines. However, we follow *Brown* and the weight of authority cited therein and conclude that these assessments are fees and not fines. We therefore find that defendant is not entitled to offset the $2 State's Attorney records automation fee nor the $2 public defender records automation fee.

¶ 24 Finally, defendant argues that he is entitled to credit against the $10 Arrestee's Medical Costs Fund fee (730 ILCS 125/17 (West 2016)). The statute providing for this fee states, "The fee shall not be considered a part of the fine for purposes of any reduction in the fine." 730 ILCs 125/17 (West 2016). Based on the plain language of this statute, we conclude defendant is not entitled to offset the charge with his presentence incarceration credit.

¶ 25 In conclusion, defendant's three convictions for aggravated battery cannot stand as they are based on the same physical act. Because we cannot determine which of these offenses is the most serious, we remand this matter to the trial court to make that determination and to vacate the two less serious convictions. We also direct the clerk of the circuit court to amend the fines, fees and costs order to vacate the $5 electronic citation and $5 court system fees, and reflect a credit for the $15 state police operations assessment.

¶ 26 Vacated in part and remanded; fines, fees and costs order modified.