

2018 IL App (1st) 162647-U

No. 1-16-2647

Order filed October 25, 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. 15 CR 1055
)	
WILISH BAKER,)	Honorable
)	Earl B. Hoffenberg,
Defendant-Appellant.)	Judge, presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's fines and fees order amended to vacate three improper fees 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 Wilish Baker was convicted of unlawful use of a weapon by a felon (UUWF) and sentenced to three years' imprisonment. The trial court also assessed defendant fines, fees and court costs totaling \$574. On appeal, defendant does not challenge his conviction or term of imprisonment, but contends that his fines and fees order

should be amended. Defendant contends that three monetary charges were improperly assessed and should be vacated. He also argues that monetary credit for the days he spent in presentencing custody should be applied against several of the assessments. Defendant further argues that the fines and fees order should be amended to increase the number of days he served in custody from 212 to 275 days.¹ We vacate three fees, apply a credit of \$65 against two assessments, and affirm defendant's conviction and sentence in all other respects.

¶ 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. The evidence established that shortly after midnight on January 1, 2015, four Chicago police officers were riding together in a vehicle when they heard several shots being fired in an alley in the 1400 block of North Austin Avenue. The officers exited their vehicle, walked through the alley, and heard several more gunshots coming from a backyard. Officer Demarco observed defendant walking in the gangway carrying a blue steel revolver in his right hand. Demarco announced his office, and defendant fled into the rear of a two-flat apartment building. Several officers entered the building and located defendant in the first-floor apartment. Demarco searched the rear enclosed porch and recovered a .38-caliber blue steel revolver from the floor near a stairwell. The firearm was loaded with one live round and four spent shell casings. The gun was still warm, indicating that it had been recently fired. Under the stairwell, Demarco found a duffle bag containing three additional semiautomatic handguns. Defendant was arrested and transported to the police station. After being advised of his *Miranda* rights, defendant stated “[l]ook officers,

¹ Defendant does not challenge the days of sentencing credit on his mittimus, which was updated when a new mittimus was issued. He is only challenging the number of days served in custody as reflected on his fines and fees order.

you got me, but I'm not saying nothing more about those guns." The State also presented a copy of defendant's prior conviction for UUWF.

¶ 4 The trial court found defendant guilty of four counts of UUWF. The court merged the counts and initially sentenced defendant to six years' imprisonment as a Class X offender. At that time, the court awarded defendant 212 days of sentencing credit, and assessed him \$574 in fines, fees and court costs. Defendant filed a timely motion to reconsider the sentence. At the hearing on that motion two months later, the parties agreed that defendant was not subject to Class X sentencing. The trial court vacated the Class X sentence and resentenced defendant to three years' imprisonment for the Class 2 felony. The court then awarded defendant credit for 275 days spent in custody.

¶ 5 On appeal, defendant contends that his fines and fees order must be amended. Defendant contends that three assessments must be vacated because they were erroneously assessed. He also argues that he is entitled to apply presentence monetary credit against several assessments that are labeled as fees, but are actually fines. Defendant argues that the fines and fees order should be further amended to increase the number of days he served in custody from 212 to 275.

¶ 6 Defendant acknowledges that he did not preserve these issues for appeal because he did not challenge the assessments, or the days of sentencing credit on his fines and fees order, 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, Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), or as a claim of ineffective assistance of counsel. The State acknowledges the forfeiture, agrees that plain error applies, and addresses the merits of defendant's claims.

¶ 7 The rules of forfeiture and waiver also apply to the State, and where the State fails to argue that defendant has 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 issue, 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.

¶ 8 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.

¶ 9 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.

¶ 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 212 days in presentence custody, and is therefore entitled to a maximum credit of \$1060.

¶ 11 We deny defendant's request to increase the number of days served in custody on his fines and fees order from 212 to 275. The trial court was correct to increase the number of days on defendant's mittimus because the credit reflected on the mittimus is for time actually served in custody as of the date of that order. When the date of defendant's mittimus changed, the number of days he served in custody had increased. However, on the fines and fees order, pursuant to section 110-14 of the Code, defendant is given credit for the days spent in *presentence* custody on aailable offense when he does not supply bail. 725 ILCS 5/110-14 (West 2014). The 63 days between defendant's original sentence and revised sentence do not constitute days in *presentence* custody. Defendant was serving his prison sentence during that time. Accordingly, defendant is not entitled to additional monetary credit for those days.

¶ 12 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).

¶ 13 Defendant contends, the State agrees, 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.

¶ 14 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 fee² (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.³

¶ 15 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. Dewayne Brown*, 2017 IL App (1st) 150146, ¶ 39 (relying on *Tolliver* and finding the felony complaint filed, automation and document storage fees to be fees); *People v. Larry Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding that the document storage and automation fees 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

² Both parties incorrectly assert that defendant was assessed \$25 for the automation fee. The fines and fees order, however, indicates that defendant was assessed \$15 for this fee.

³ 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).

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.

¶ 16 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 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.

¶ 17 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).

¶ 18 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.

¶ 19 Alternatively, defendant argues, and the State agrees, that the \$2 Public Defender records automation fee should be vacated because defendant was represented by private counsel, not the Public Defender, and thus, the fee is inapplicable here. *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 30. We agree and vacate the \$2 Public Defender records automation fee. We direct the clerk of the circuit court to further amend the fines and fees order to reflect this modification.

¶ 20 For these reasons, we vacate the \$5 electronic citation fee, the \$5 court system fee, and the \$2 Public Defender records automation fee from the fines and fees order. 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. We affirm defendant's conviction and sentence in all other respects.

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