

No. 1-16-2794

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 7945
)	
JABBAAR JACKSON,)	Honorable
)	Neera Lall Walsh,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Griffin and Walker concurred in the judgment.

ORDER

- ¶ 1 *Held:* The fines, fees, and costs order is corrected to reflect the vacatur of two fees and to reflect presentence custody credit against six fines.
- ¶ 2 Following a bench trial, defendant Jabbaar Jackson was found guilty of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (3)(A-5) (West 2014)) and sentenced to the mandatory minimum of one year in prison. On appeal, Mr. Jackson challenges the fines and fees that were imposed by the trial court. For the reasons that follow, we direct the trial court to correct the fines, fees, and costs order.

¶ 3

I. BACKGROUND

¶ 4 Mr. Jackson was charged by information with eight counts of AUUW. Prior to trial, the State nol-prossed all but the first count, which alleged that on April 16, 2015, Mr. Jackson carried on or about his person a handgun that was uncased, loaded, and immediately accessible, and had not been issued a concealed carry license or a FOID card. At trial, the State presented evidence that on the date in question, a Chicago police officer saw Mr. Jackson walk out of an alley carrying a book bag, make eye contact with the officer, and then place the bag by the rear tire of a nearby parked car. The officer approached for a field interview, during which Mr. Jackson said he had marijuana on his person and gave it to the officer. The officer then placed Mr. Jackson in custody, picked up the book bag, and recovered from it a loose, loaded, semiautomatic handgun. After receiving *Miranda* warnings, Mr. Jackson made a statement relating that he bought the gun for protection. The parties stipulated that Mr. Jackson did not have a concealed carry permit or a FOID card.

¶ 5 The trial court found Mr. Jackson guilty of AUUW and denied his motion for a new trial. At sentencing, the court imposed the mandatory minimum term of one year in prison. Defense counsel reported that Mr. Jackson had served 137 days in presentence custody, and the trial court stated Mr. Jackson would “get credit as \$5 a day toward court costs.” The written fines, fees, and costs order included in the record indicates that Mr. Jackson was required to pay a total of \$774 in fines, fees, and costs. While the order includes a preprinted notation that “Allowable credit toward fine will be calculated,” it does not specify the amount of monetary credit Mr. Jackson was to receive. Mr. Jackson filed a motion to reconsider sentence, which the trial court denied.

¶ 6

II. JURISDICTION

¶ 7 Mr. Jackson was sentenced on September 21, 2016, and filed a timely notice of appeal

that same day. This court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 8

III. ANALYSIS

¶ 9 On appeal, Mr. Jackson contends that this court should vacate two assessments that were improperly imposed by the trial court and should grant him \$5-per-day presentence custody credit against 12 other assessments. Mr. Jackson did not challenge his fines and fees in his postsentencing motion. However, we have previously held that claims for presentence custody credit can be raised for the first time on appeal. *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 26. In addition, the State has responded to Mr. Jackson's arguments on their merits, and asserts that "this court should correct the fines, fees, and costs order." As such, the State has waived any forfeiture argument. See *People v. Brown*, 2018 IL App (1st) 160924, ¶ 25; *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7. Our review of the propriety of the trial court's imposition of fines and fees is *de novo*. *Brown*, 2018 IL App (1st) 160924, ¶ 25; *Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 10 First, Mr. Jackson contends, and the State agrees, that two assessments were not statutorily authorized in his case and should be vacated: the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2014)) and the \$5 court system fee (55 ILCS 5/5-1101(a) (West 2014)). We agree with the parties. The \$5 electronic citation fee does not apply to felonies (*People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46), and the \$5 court system fee applies only to vehicle offenses (*People v. Williams*, 394 Ill. App. 3d 480, 483 (2011)). Here, Mr. Jackson was convicted of a felony that is not a vehicle offense. Therefore, we vacate both \$5 assessments and direct the trial

court to correct the fines, fees, and costs order accordingly.

¶ 11 Next, Mr. Jackson contends that he is entitled to *per diem* presentence custody credit against various fines. Under section 110-14(a) of the Code of Criminal Procedure of 1963, an offender who has been assessed one or more fines is entitled to a \$5-per-day credit for time spent in presentence custody as a result of the offense for which the sentence was imposed. 725 ILCS 5/110-14(a) (West 2014). It is well-established that the presentence custody credit applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006). A “fine” is punitive in nature, while a “fee” is assessed in order to compensate the State or recoup expenses incurred by the State in prosecuting a defendant. *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 21. Here, Mr. Jackson spent 137 days in presentence custody. Therefore, he is entitled to up to \$685 in presentence custody credit against his fines.

¶ 12 Mr. Jackson argues, and the State concedes, that he is entitled to credit against four assessments that are designated on the fines, fees, and costs order as “FINES OFFSET by the \$5 per-day pre-sentence incarceration [credit].” These fines are 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)); the \$5 drug court fine (55 ILCS 5/5-1101(f) (West 2014)); and the \$30 children’s advocacy center fine (55 ILCS 5/5-1101(f-5) (West 2014)). We accept the State’s concession and hold that these assessments are fines against which Mr. Jackson can receive \$5-per-day credit for the time he spent in presentence custody. See *People v. Price*, 375 Ill. App. 3d 684, 700-01 (2007) (\$10 mental health court fine and \$5 youth diversion/peer court fine)); *People v. Unander*, 404 Ill. App. 3d 884, 886 (2010) (\$5 drug court fine)); *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009) (\$30 children’s advocacy center fine)).

¶ 13 Mr. Jackson further argues that he is entitled to credit against eight assessments that are

designated on the fines, fees, and costs order as “FEES AND COSTS *NOT* OFFSET BY THE \$5 PER-DAY PRE-SENTENCE INCARCERATION CREDIT.” (Emphasis in original.) These fees are the \$190 felony complaint filed, (clerk) fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)); the \$25 automation (clerk) fee, 705 ILCS 105/27.3a-1 (West 2014)); the \$15 state police operations fee (705 ILCS 27.3a-1.5 (West 2014)); the \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2014)); the \$2 state’s attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)); the \$25 document storage (clerk) fee (705 ILCS 105/27.3c (West 2014)); the \$25 court services (sheriff) fee (55 ILCS 5/5-1103 (West 2014)); and a \$50 court system fee (55 ILCS 5/5-110(c) (West 2014)).

¶ 14 The State agrees with Mr. Jackson that he is entitled to presentence incarceration credit against two of these assessments: the \$15 state police operations fee (see *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31) and the \$50 court system fee (see *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30). We accept the State’s concession and hold that these assessments are fines against which Mr. Jackson can receive \$5-per-day credit for the time he spent in presentence custody. We direct the trial court to correct the fines, fees, and costs order to reflect this credit.

¶ 15 The State does not concede Mr. Jackson’s claim for credit against the remaining six assessments he has identified: the \$190 felony complaint fee, the \$25 automation (clerk) fee, the \$2 public defender records automation fee, the \$2 state’s attorney records automation fee, the \$25 document storage (clerk) fee, and the \$25 court services (sheriff) fee. This court has previously considered challenges to these six assessments and found them to be fees, not fines, and therefore not subject to offset by the \$5-per-day presentence custody credit. See, e.g., *Brown*, 2018 IL App (1st) 160924, ¶¶ 31, 32; *Smith*, 2018 IL App (1st) 151402, ¶¶ 15, 16. As for the \$2 state’s attorney records automation fee and the \$2 public defender records automation fee, the

overwhelming majority of legal authority holds that they are fees not subject to offset. See, *e.g.*, *Brown*, 2018 IL App (1st) 160924, ¶ 31; *Smith*, 2018 IL App (1st) 151402, ¶ 16; *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (collecting cases); but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (finding that these two assessments are fines, not fees). We note that our supreme court has allowed appeal in a case where this court determined that all six of these assessments are fees not subject to offset. *People v. Clark*, 2017 IL App (1st) 150740-U, ¶¶ 21-23, *appeal allowed*, No. 122495 (Sept. 27, 2017). In keeping with what is currently the weight of authority, we conclude that these six assessments are fees and, therefore, may not be offset by Mr. Jackson's presentence custody credit.

¶ 16

IV. CONCLUSION

¶ 17 For the reasons explained above, we vacate the \$5 electronic citation fee and the \$5 court system fee. In addition, we find that the \$10 mental health court fine, the \$5 youth diversion/peer court fine, the \$5 drug court fine, the \$30 children's advocacy center fine, the \$15 state police operations fee, and the \$50 court system fee are offset by *per diem* credit for presentence custody, of which the fines, fees, and costs order should reflect that Mr. Jackson served 137 days. The total amount of fines, fees, and costs is reduced from \$774 to \$649. We direct the trial court to correct the fines, fees, and costs order accordingly.

¶ 18 Affirmed; fines, fees, and costs order corrected.