

2018 IL App (1st) 163016-U

No. 1-16-3016

Order filed 31, 2018

Sixth 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. 13 CR 7836
)	
DAPHANIE LOVE,)	Honorable
)	Neil J. Linehan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* We modify the fines, fees and costs order entered in this aggravated driving under the influence case.

¶ 2 Following a jury trial, defendant Daphanie Love was convicted of aggravated driving under the influence (DUI) (625 ILCS 5/11-501(a) (West 2012)), and sentenced to a prison term of four years and six months. On appeal, defendant challenges various fines and fees. We order the fines, fees and costs order corrected.

¶ 3 Because defendant does not challenge the sufficiency of the evidence, we recite only those facts necessary to our disposition. The evidence at trial established that, on April 5, 2013, Chicago police officer Harolyn Martin, who was in her marked squad vehicle driving near 100th Place and Beverly Avenue, observed defendant's vehicle sideways and blocking traffic. The vehicle was driving in a "jerky, like, motion." Martin approached the vehicle with her partner, and defendant appeared confused. Defendant's speech was "mumbly" and Martin could not understand her. Defendant's eyes were glassy and red and she smelled of alcohol. Martin and her partner had to assist defendant in putting her car in park, getting out of her vehicle, and walking to the squad car. The officers asked defendant to perform standard field sobriety tests, but Martin could not understand defendant's responses. Martin's squad car was equipped with a video camera and captured the incident. The State published the video and Martin narrated it for the jury.

¶ 4 The jury found defendant guilty of aggravated DUI. The Cook County Adult Probation Department prepared a presentence investigation report. At sentencing, the State introduced a certified copy of defendant's driving abstract, which showed two prior convictions for DUI-related offenses: one for DUI in Illinois and one for "operating while intoxicated" in Indiana. The court thereafter sentenced defendant to a prison term of four years and six months. The court imposed various fines and fees on defendant and gave her credit for 245 days of presentence incarceration.

¶ 5 On appeal, defendant challenges several assessed fines and fees. She concedes that she failed to preserve these issues, but asks that this court review her claims pursuant to the plain error doctrine. Defendant additionally contends that issues relating her \$5 presentence

incarceration credit cannot be forfeited. The State does not argue that defendant forfeited the issues, and instead agrees that the fines, fees and costs order should be corrected. Because the State has not argued that these issues are forfeited, we address their merits. 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).

¶ 6 The parties agree that the \$5 electronic citation fee assessed under section 27.3e of the Clerks of Courts Act (705 ILCS 105/27.3e (West 2016)) 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” (705 ILCS 105/27.3e (West 2016)), and the fee does not apply to felony offenses.

¶ 7 Defendant’s remaining contentions involve the eligibility to offset presentence incarceration credit toward various monetary assessments imposed against her.

¶ 8 The trial court assessed \$1692 in fines, fees and costs on defendant. 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 her fines for each day she was incarcerated prior to sentencing. 725 ILCS 5/110-14(a) (West 2016). The Code specifies that “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 reimburse the State “for a cost incurred in the defendant’s prosecution.” *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63 (citing *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). On the other hand, fines are punitive in nature and “part of the punishment

for a conviction.” *Id.* The fines, fees and costs order does not show defendant is entitled to presentence incarceration credit; however, the record shows that defendant was entitled to credit for 245 days. Thus, she has \$1225 in credit available toward her fines.

¶ 9 The parties agree that the \$15 State Police operations (705 ILCS 105/27.3a(1.5) (West 2016)), the \$50 court system (55 ILCS 5/5-1101(c)(1) (West 2016)), and \$800 subsequent DUI offense (625 ILCS 5/11-501.01(f) (West 2016)) charges are fines, rather than fees, that should be offset by defendant’s presentence incarceration credit. We agree that these assessments are fines because they do 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”); *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21 (finding the defendant was entitled to credit for the court system assessment imposed under section 5-1101(c) of Counties Code because it is not intended to compensate the State for the cost of prosecuting a defendant); 625 ILCS 5/11-501.01(f) (West 2016) (“If the person has been previously convicted of violating Section 11-501 or a similar provision of a local ordinance, the *fine* shall be \$1,000, and the circuit clerk shall distribute \$200 to the law enforcement agency that made the arrest and \$800 to the State Treasurer for deposit into the General Revenue Fund.” (Emphasis added.)); see also *People v. O’Laughlin*, 2012 IL App (4th) 110018, ¶¶ 11-12 (identifying the assessment under section 11-501.01(f) of the Illinois Vehicle Code as a fine).

¶ 10 Defendant next asserts that her 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)), and the \$25 document storage charge

(705 ILCS 105/27.3c(a) (West 2016)). We previously determined these assessments were fees, as they are “compensatory and a collateral consequence of conviction.” *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006). Therefore, defendant is not entitled to offset these fees with her presentence incarceration credit.

¶ 11 Defendant also contends that her presentence incarceration credit should apply to the \$2 State’s Attorney’s records automation charge (55 ILCS 5/4-2002.1(c) (West 2016)) because it is punitive, rather than intended to reimburse the State for costs associated with prosecuting and defending defendant.

¶ 12 In *Brown*, 2017 IL App (1st) 142877, ¶ 76, this court determined that the \$2 State’s Attorney records automation assessment is a fee. We acknowledge that *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, concluded that this charge is a fine. However, we follow *Brown* and the weight of authority cited therein and find that this assessment is a fee and not a fine. We therefore conclude that defendant is not entitled to offset the \$2 State’s Attorney records automation fee.

¶ 13 Finally, defendant argues that the \$10 probation and court services operations charge (705 ILCS 105/27.3a(1.1) (West 2016)) is a fine subject to offset. Although defendant acknowledges this court’s contrary holding in *People v. Mullen*, 2018 IL App (1st) 152306, ¶¶ 54-56, she asks that we depart from this holding and conclude this charge is a fine because it is a blanket assessment collected from every defendant who has been assessed a court automation fee. Thus, defendant argues the assessment constitutes a penalty, rather than a fee.

¶ 14 In *Mullen*, this court explained that the plain language of the statute suggested the charge was a fee because the statute authorized the clerk of the circuit court to impose the assessment,

and the clerk is not authorized to impose fines. *Mullen*, 2018 IL App (1st) 152306, ¶ 55. Further, this court determined that the Fourth District's analysis of the issue in *People v. Rogers*, 2014 IL App (4th) 121088, was "a rational interpretation of the legislative intent that this is a fee." *Id.* at ¶ 56. In *Rogers*, the Fourth District held that the \$10 probation and court services operations charge is a fee where, as here, the probation office was involved in preparing a presentence investigation report for the defendant, and therefore, the assessment was intended to recover a cost actually incurred in the defendant's prosecution. *Rogers*, 2014 IL App (4th) 121088, ¶ 27. While we acknowledge the Third District's contrary holding in *People v. Carter*, 2016 IL App (3d) 140196, ¶¶ 56-57 (finding that the probation and court services assessment is a fine because the assessment is imposed regardless of whether the defendant used probation office services), we decline to depart from our holding in *Mullen*, and conclude the \$10 probation and court services operations charge is a fee which may not be offset by presentence incarceration credit.

¶ 15 We vacate the \$5 electronic citation fee. The \$15 State Police operations, \$50 court systems, and \$800 subsequent DUI enforcement assessments are creditable fines that should be offset by defendant's presentence custody credit. Defendant is entitled to 245 days of presentence custody credit. We modify the fines, fees and costs order accordingly. The judgment of the circuit court is affirmed in all other respects.

¶ 16 Affirmed; fines, fees, and costs order modified.