

2018 IL App (1st) 163140-U
No. 1-16-3140
Order filed November 30, 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. 15 CR 674
)	
ANDRE WILEY,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge, presiding.

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

ORDER

¶ 1 *Held:* Fines and fees order is corrected to properly reflect presentencing custody credit against fines.

¶ 2 Following a 2016 bench trial, defendant Andre Wiley was convicted of the offense of armed habitual criminal and sentenced to six years' imprisonment with fines and fees. He contends on appeal that he should receive presentencing custody credit against his fines. The

State agrees that some, but not all, of the assessments at issue are fines subject to credit. We grant presentencing custody credit against fines as described below, and otherwise affirm.

¶ 3 Defendant was charged in relevant part with armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2014)) for allegedly possessing a firearm on or about December 26, 2014, while having certain prior felony convictions. The evidence at trial was that a police officer responding to a report of a man waving a gun saw defendant flee so the officer pursued him. The officer saw a firearm drop from defendant's waistband during the pursuit and recovered the firearm. Defendant was found guilty of armed habitual criminal and sentenced on November 3, 2016, to six years' imprisonment with fines and fees.¹ The court awarded 678 days of presentencing custody credit against his prison sentence, and the order assessing fines and fees reflects that number of days but no monetary credit. Defendant made no postsentencing motion, written or oral.

¶ 4 On appeal, defendant contends that presentencing custody credit should be applied to his assessments that are labeled as fees but are in fact fines. The State agrees that some, but not all, of the assessments at issue are fines subject to credit. Defendant acknowledges not raising this claim in the trial court, and the State does not argue that he has forfeited it. The State has thereby forfeited the forfeiture issue and we will consider this claim. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 25.

¶ 5 Defendant's 678 days of presentencing custody entitle him to up to \$3390 credit against his fines at the statutory \$5 per day. 725 ILCS 5/110-14(a) (West 2014). The parties correctly agree that defendant is due credit on \$65 of his charges that are fines: \$50 for the court system

¹ He was also found guilty of multiple counts of unlawful use of a weapon by a felon and aggravated unlawful use of a weapon, which the trial court merged at sentencing.

and \$15 for State Police operations. 55 ILCS 5/5-1101(c) (West 2014); 705 ILCS 105/27.3a(1.5) (West 2014); *Brown*, 2018 IL App (1st) 160924, ¶ 30. We so order.

¶ 6 The parties dispute whether five of defendant's charges are fines or fees.² We have held that the \$190 charge for filing a complaint with the circuit court clerk (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), and the charges of \$25 each for the circuit court clerk for automation and document storage (705 ILCS 105/27.3a(1), 27.3c (West 2014)) are all fees. *Brown*, 2018 IL App (1st) 160924, ¶ 32. In *Brown*, this court determined that the \$2 records automation assessment fees to the State's Attorney and the Public Defender are fees. *Id.* ¶ 76. 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 find that this assessment is a fee and not a fine. We therefore conclude that defendant is not entitled to offset the \$2 records automation fees.

¶ 7 Accordingly, we correct the fines and fees order to reflect \$65 credit. We affirm the judgment in all other respects.

¶ 8 Affirmed; order corrected.

² A case pending in our supreme court concerns whether these charges are fines or fees. *People v. Clark*, No. 122495.