

2018 IL App (1st) 170134-U

No. 1-17-0134

Order filed December 28, 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 4048
	)	
ANTWAN HALMON,	)	Honorable
	)	Thomas J. Byrne,
Defendant-Appellant.	)	Judge, presiding.

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

**ORDER**

¶ 1 *Held:* We correct the fines, fees, and costs order to reflect presentence custody credit against applicable fines.

¶ 2 Following a bench trial, the circuit court convicted defendant Antwan Halmon of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2016)) and sentenced him to 40 months in prison. On appeal, defendant does not challenge his conviction or sentence. He contends only that the fines, fees, and costs order should be corrected to apply *per*

*diem* presentence custody credit to a number of assessed fines. For the reasons that follow, we correct the fines, fees, and costs order.

¶ 3 Defendant was charged by indictment with one count of UUWF and nine counts of aggravated unlawful use of a weapon (AUUW). Before trial, the State nol-prossed all of the counts charging AUUW. At trial, the State presented evidence that a Chicago police officer witnessed defendant throw a handgun from a moving vehicle, that a second Chicago police officer recovered the handgun, and that defendant had a prior felony conviction for possession of a stolen firearm. The circuit court found defendant guilty of UUWF.

¶ 4 The court sentenced defendant to 40 months in prison. The court also imposed \$594 in fines, fees, and costs, and indicated that defendant would be credited with 285 days of presentence custody. While the written order assessing fines, fees, and costs includes a preprinted notation that “[a]llowable credit toward fine will be calculated,” it does not specify the amount of monetary credit defendant would receive.

¶ 5 On appeal, defendant contends that this court should grant him \$5-per-day presentence custody credit against 12 assessments. He acknowledges that he did not challenge his fines and fees in a postsentencing motion. Nevertheless, defendant argues that we may reach his arguments regarding fines and fees under the doctrine of plain error, under Illinois Supreme Court Rule 615(b), or because trial counsel was ineffective. The State has responded that errors in the fines, fees, and costs order should be corrected despite the forfeiture, as section 110-14(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-14(a) (West 2016)) confers a statutorily mandated benefit to all defendants that cannot be waived and may be raised for the first time on appeal (see *People v. Caballero*, 228 Ill. 2d 79, 83 (2008)), and because this court has held trial

counsel's failure to request the appropriate credit constitutes ineffective assistance of counsel (see *People v. Seidlinski*, 279 Ill. App. 3d 1003, 1005-07 (1996)). By these statements, the State has waived any forfeiture argument. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 25; *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7. As such, we will address defendant's claims. We review the trial court's imposition of fines and fees *de novo*. *Brown*, 2018 IL App (1st) 160924, ¶ 25; *Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 6 Under section 110-14(a) of the Code, 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 2016). 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, the trial court credited defendant with 285 days of presentence custody, which would entitle him to up to \$1,425 in *per diem* credit against his fines.<sup>1</sup>

¶ 7 Defendant argues, and the State concedes, that he is entitled to credit against five 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

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<sup>1</sup> In a footnote in his brief, defendant acknowledges that he was not actually in presentence custody for this number of days. He was arrested on February 20, 2016, and sentenced on November 30, 2016, which means he was in presentence custody for 284 days, not the 285 days stated by the trial court and listed on the mittimus and the fines, fees, and costs order. See *People v. Williams*, 239 Ill. 2d 503, 509 (2011) (the day of sentencing is not calculated for presentencing credit). However, as defendant points out, this inaccuracy does not affect the total amount of monetary credit to which he is entitled, since the amount credited may not exceed the total amount of the fines imposed. 725 ILCS 5/110-14(a) (West 2016). Because neither party has asked for a correction to this number on the mittimus or the fines, fees, and costs order, we choose to honor the trial court's calculation.

(55 ILCS 5/5-1101(d-5) (West 2016)); the \$5 Youth Diversion / Peer Court fine (55 ILCS 5/5-1101(e) (West 2016)); the \$5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2016)); the \$30 Children’s Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2016)); and the \$30 Fine to Fund Juvenile Expungement (730 ILCS 5/5-9-1.17 (West 2016)). We accept the State’s concession and hold that these assessments are fines against which defendant 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); *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 16 (\$30 juvenile expungement fine).

¶ 8 We are mindful of the State’s position that because the fines, fees, and costs order designates these five assessments (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, and the \$30 Fine to Fund Juvenile Expungement) as “FINES OFFSET by the \$5 per-day pre-sentence incarceration [credit],” defendant has already been credited for them. While it is true that the written order includes this designation, we cannot discern from the order whether defendant actually did receive that credit. To ensure that he does, we correct the fines, fees, and costs order to reflect credit against these five fines. See *Mullen*, 2018 IL App (1st) 152306, ¶ 58 (where this court was “unsure whether the presence or absence of a calculation [in the fines, fees, and costs order] affects whether a defendant receives the necessary credit,” we ordered modification of the order to ensure the defendant received his due credit).

¶ 9 Defendant further argues that he is entitled to credit against seven 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 (in order of listing on the preprinted fines, fees, and costs form): the \$190 Felony Complaint Filed (Clerk) fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)); the \$25 Automation (Clerk) fee (705 ILCS 105/27.3a-1 (West 2016)); the \$15 State Police Operations Fee (705 ILCS 27.3a-1.5 (West 2016)); the \$2 Public Defender Records Automation Fee (55 ILCS 5/3-4012 (West 2016)); the \$2 State’s Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2016)); the \$25 Document Storage (Clerk) fee (705 ILCS 105/27.3c (West 2016)); and a \$50 Court System fee (55 ILCS 5/5-110(c) (West 2016)).

¶ 10 The State agrees with defendant 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 defendant can receive \$5-per-day credit for the time he spent in presentence custody. We order the clerk of the circuit court to correct the fines, fees, and costs order to reflect this credit.

¶ 11 The State does not concede defendant’s claim for credit against the remaining five 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, and the \$25 Document Storage (Clerk) fee. This court has previously considered challenges to these assessments and found them to be fees, not fines, and therefore not subject to offset by

the \$5-per-day presentence custody credit. *E.g.*, *Brown*, 2018 IL App (1st) 160924, ¶¶ 31, 32; *Smith*, 2018 IL App (1st) 151402, ¶¶ 15, 16.<sup>2</sup> In *Brown*, this court determined that the \$2 records automation assessment fees to the State's Attorney and the Public Defender are fees. *Brown*, 2018 IL App (1st) 160924, ¶ 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. In keeping with precedent, we conclude that these five assessments are fees and, therefore, may not be offset by defendant's presentence custody credit.

¶ 12 For the reasons explained above, 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 \$30 Fine to Fund Juvenile Expungement, the \$15 State Police Operations Fee, and the \$50 Court System fee are offset by presentence credit. The total amount of fines, fees, and costs is reduced from \$594 to \$449. Pursuant to our authority under Illinois Supreme Court Rule 366 (Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994)), we correct the fines, fees, and costs order accordingly.

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

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<sup>2</sup> We note that our supreme court has allowed appeal in a case where this court determined 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).