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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 14-CF-3370
)	
ZAKEED D. FOSTER,)	Honorable
)	Mark L. Levitt,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* (1) As the trial court imposed a public defender fee without any discussion of it in open court, it conducted no hearing on the fee, and thus we vacated the fee outright without remanding for a hearing; (2) defendant was entitled to an additional day of sentencing credit; (3) defendant was entitled to full credit against various fines—though not the fine for the County Jail Medical Costs Fund, which by statute was not subject to the credit—to reflect his time in presentencing custody.

¶ 2 Following a jury trial, defendant, Zakeed D. Foster, was found guilty of armed robbery (720 ILCS 5/18-2(a)(1) (West 2014)) and sentenced to 14 years in prison. An exhibit attached to the sentencing order listed various fees, fines, and costs, including a \$750 public defender fee,

that had been imposed by the trial court. On appeal, defendant argues that the public defender fee must be vacated, because the trial court failed to provide him with notice and a hearing to determine the reasonableness of the fee. Defendant also argues that he is entitled to an additional day of credit against his sentence and to full credit against \$101.75 in fines. For the reasons that follow, we vacate the \$750 public defender fee, we grant defendant an additional day of sentencing credit, and we grant defendant full credit against \$91.75 in fines.

¶ 3

I. BACKGROUND

¶ 4 Defendant's sentencing hearing took place on October 15, 2015. At the conclusion of the hearing, the trial court sentenced defendant to 14 years in prison. The sentencing order, filed on October 15, 2015, indicates that defendant was entitled to credit for 211 days served from March 18, 2015, through October 15, 2015. A document labeled "Exhibit A," entitled "Assessment of Fines, Fees, Costs, and Restitution," was also filed on October 15, 2015. The first paragraph reads:

"Having determined all issues in this cause, including defendant's financial ability to pay, this court has assessed and ordered the payment by the the [*sic*] defendant of the following ***[.]"

It is followed by an itemized list of assessments totaling \$1196. The list includes a \$750 public defender fee. Below the list is a paragraph indicating that defendant is entitled to a \$5-per-day credit against certain assessments for time spent in presentencing custody. A sentence within that paragraph reads: "Defendant's credit is calculated at ___ days." No number was written on the blank line.

¶ 5 A document entitled "Judgment Order" was also filed on October 15, 2015. It reads as follows:

“On motion of the prosecuting attorney and the court finding that the above defendant has \$1,155.62 due and owing that was previously ordered to be paid on or before this date;

Therefore, judgment is entered in favor of the People of the State of Illinois and against Zakeed D[.] Foster in the amount of \$1,155.62.”

¶ 6 Defendant filed motion for reconsideration of his sentence, which the trial court denied, and defendant timely appealed.

¶ 7 **II. ANALYSIS**

¶ 8 Defendant first argues that the \$750 public defender fee must be vacated outright, because it was imposed without the requisite hearing. In response, the State concedes that the fee must be vacated, but it argues that, because the court held a hearing, albeit an insufficient one, the case should be remanded for a proper hearing.

¶ 9 Although defendant did not raise this issue below, we may consider the issue as forfeiture does not apply. See *People v. Hardman*, 2017 IL 121453, ¶ 49 (the defendant’s failure to object to the imposition of the public defender fee at sentencing hearing did not result in forfeiture); *People v. Carreon*, 2011 IL App (2d) 100391, ¶ 11 (“where a trial court imposes this fee without following the appropriate procedural requirements, application of the forfeiture rule is inappropriate”). This issue is a question of law, and we review it *de novo*. *People v. Caballero*, 228 Ill. 2d 79, 82 (2008).

¶ 10 Section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-3.1(a) (West 2014)) authorizes the trial court to order a criminal defendant for whom counsel has been appointed to pay a reasonable amount to reimburse the county or the state. However, prior to ordering reimbursement, the trial court must conduct a hearing, within 90 days of sentencing,

regarding the defendant's financial resources. *Id.*; *People v. Daniels*, 2015 IL App (2d) 130517, ¶ 25. The hearing must not be conducted in a perfunctory manner. *People v. Somers*, 2013 IL 114054, ¶ 14. Instead, "the court must give the defendant notice that it is considering imposing the fee, and the defendant must be given the opportunity to present evidence regarding his or her ability to pay and any other relevant circumstances." *Id.* Where the trial court conducts a timely hearing, but one that is insufficient to comply with the requirements of section 113-3.1(a) of the Code, the proper remedy is to vacate the public defender fee and remand for a proper hearing on the defendant's ability to pay. *Id.* ¶¶ 14-18. The fee must be vacated outright only where there was no hearing whatsoever. *Daniels*, 2015 IL App (2d) 130517, ¶ 30.

¶ 11 Recently, the supreme court made clear that, as long as " 'some sort of hearing' " took place within the statutory time period, the proper remedy is a remand. *Hardman*, 2017 IL 121453, ¶ 70. The supreme court clarified that " 'some sort of hearing' encompasses a proceeding that meets the ordinary definition of hearing." *Id.* ¶ 66. A hearing is a "judicial session usu[ally] open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying." Black's Law Dictionary 836 (10th ed. 2014); see *Hardman*, 2017 IL 121453, ¶ 64.

¶ 12 Defendant contends that, here, the trial court failed to conduct any hearing at all on the public defender fee and thus the fee must be vacated outright. We agree. Exhibit A indicates that the trial court imposed the public defender fee, along with other fees, fines, and costs, on October 15, 2015. The only proceeding that took place that day was the sentencing hearing. There was no mention of the public defender fee at any time during the sentencing hearing. Given that the fee was assessed without some sort of hearing, it must be vacated outright. See *Daniels*, 2015 IL App (2d) 130517, ¶ 29 (public defender fee vacated outright where, at the

sentencing hearing, “the trial court made absolutely no reference to the public defender or to its intent to impose the fee. Instead, the fee was imposed at some time after the hearing, by written order.”).

¶ 13 We reject the State’s argument that Exhibit A and the separate judgment order entered on October 15, 2015, demonstrate that “there must have been some sort of hearing that was not recorded.” First, we fail to see the connection between the separate judgment order and the public defender fee. The order refers to an unspecified motion by the prosecutor and a previously-imposed judgment of \$1155.62 against defendant. We have no way of knowing what the judgment was for, and the State does not point to any report of proceedings to explain it. In addition, the amount of the separate judgment does not correlate to the \$750 public defender fee or to the amount of the fees, fines, and costs imposed on Exhibit A. Further, the fact that Exhibit A provides that the trial court determined defendant’s ability to pay does not support the State’s claim that some sort of hearing on the public defender fee occurred. As noted, there is no indication that the trial court considered the public defender fee during the sentencing hearing, and the State cites to no other report of proceedings relating to the imposition of the public defender fee.

¶ 14 Based on the foregoing, because the trial court failed to conduct some sort of hearing on the public defender fee, we vacate the fee outright.

¶ 15 Next, defendant argues, and the State concedes, that he is entitled to one additional day of credit against his sentence for time spent in custody before sentencing. A defendant has a right to one day of credit for each day (or portion thereof) that he spends in custody prior to sentencing. See 730 ILCS 5/5-4.5-100(b) (West 2014); *People v. Whitmore*, 313 Ill. App. 3d 117, 120 (2000). Time spent in custody on the day of sentencing does not count in the credit

calculation. *People v. Williams*, 239 Ill. 2d 503, 510 (2011). Sentencing credit for time served is mandatory and cannot be forfeited. *People v. Brown*, 2017 IL App (3d) 100907, ¶ 9. Here, although the sentencing order states that defendant's credit began on March 18, 2015, he actually was taken into custody on March 17, 2015, and sentenced on October 15, 2015. Thus, he is entitled to credit for 212 days. Accordingly, we grant defendant an additional day of sentencing credit.

¶ 16 Last, defendant argues that he is entitled to full credit against certain fines imposed. Under section 110-14(a) of the Code (725 ILCS 5/110-14(a) (West 2014)), a defendant who is incarcerated on a bailable offense and does not supply bail, and against whom a fine is levied in connection with the offense, shall be allowed a credit of \$5 for each day, upon his application. An application for monetary credit under section 110-14(a) of the Code may be raised for the first time on appeal. *People v. Woodard*, 175 Ill. 2d 435, 457 (1997).

¶ 17 Defendant argues that certain fines imposed upon him are subject to credit under section 110-14(a) of the Code. The State concedes that defendant is entitled to credit against the following fines, and we agree: (1) the \$10 specialty court charge (55 ILCS 5/5-1101(d-5) (West 2014)) (see *People v. Smith*, 2013 IL App (2d) 120691, ¶ 16); (2) the \$4.75 drug court charge (55 ILCS 5/5-1101(f) (West 2014)) (see *Smith*, 2013 IL App (2d) 120691, ¶ 16); (3) the \$50 county assessment (55 ILCS 5/5-1101(c) (West 2014))¹ (see *Smith*, 2013 IL App (2d) 120691, ¶ 17);

¹ The sentencing order indicates that the charge was assessed under both subsection (a) and subsection (c) of section 5-1101 of the Counties Code. However, subsection (a) applies to traffic offenses only and authorizes the imposition of a charge between \$5 and \$30 (55 ILCS 5/5-1101(a) (West 2014)). Subsection (c) authorizes a \$50 charge for "a felony" (55 ILCS 5/5-1101(c)(1) (West 2014)), which is what the trial court assessed here.

(4) the \$12 state police operations charge (705 ILCS 105/27.3a(1.5) (West 2014)) (see *Smith*, 2013 IL App (2d) 120691, ¶ 16); (5) the \$10 state police services charge (730 ILCS 5/5-9-1.17(b) (West 2014)) (see *Smith*, 2013 IL App (2d) 120691, ¶ 16); and (6) the \$5 Children’s Advocacy Center charge (55 ILCS 5/5-1101(f-5) (West 2014)) (see *Smith*, 2013 IL App (2d) 120691, ¶ 16). Thus, as defendant was incarcerated for 212 days before sentencing, he is entitled to full credit against the above fines, totaling \$91.75.

¶ 18 Defendant also contends that credit should be applied to the \$10 fee for the County Jail Medical Costs Fund (730 ILCS 125/17 (West 2014)), because this assessment is a fine, not a fee, as it does not reimburse the State for costs incurred in prosecuting a particular defendant. In support of this argument, defendant relies on *People v. Larue*, 2014 IL App (4th) 120595, ¶ 57, which found that the assessment was a fine. The State concedes that defendant is entitled to the credit. However, while we are mindful of the holding in *Larue*, we note that the statute that creates the \$10 County Jail Medical Costs Fund fee expressly forbids the fee from being considered as a fine for purposes of a reduction by presentence custody credit. See 730 ILCS 125/17 (West 2014) (“The fee shall not be considered a part of the fine for purpose of any reduction in the fine.”). We will not depart from this plain statutory language. *People v. Marshall*, 242 Ill. 2d 285 292 (2011). Accordingly, the \$10 fee for the County Jail Medical Costs Fund cannot be offset by defendant’s presentence custody credit.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we vacate the \$750 public defender fee. In addition, under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we modify the trial court’s sentencing order to reflect that defendant is to receive 212 days’ credit against his sentence and that the fines noted above, totaling \$91.75, are satisfied by the \$1060 credit. We otherwise affirm.

¶ 21 Affirmed as modified in part and vacated in part.