

2018 IL App (2d) 151164-U  
No. 2-15-1164  
Order filed May 1, 2018

**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  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	No. 13-CF-2812
v.	)	
	)	Honorable
JESSE A. VEGA,	)	George D. Strickland
	)	and Victoria A. Rossetti,
Defendant-Appellant.	)	Judges, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Hutchinson and Jorgensen concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) As the trial court imposed a public defender fee in open court, it conducted a “hearing” on the fee (though an insufficient one), and thus we vacated the fee and remanded for a proper hearing; (2) defendant was entitled to full credit against various fines (though not the “arrestee medical” assessment), to reflect his time in presentencing custody.
- ¶ 2 Following a jury trial, defendant, Jesse A. Vega, was convicted of, *inter alia*, aggravated domestic battery (720 ILCS 5/12-3.3(a) (West 2014)). The trial court sentenced him to 25 years and 4 months in prison for that offense. The court also imposed various assessments, including a public defender fee. Defendant appeals, contending that (1) the public defender fee must be

vacated because the trial court failed to hold a proper hearing and (2) he is entitled to credit against the assessments that are considered fines for the 767 days he spent in custody before sentencing. We vacate the public defender fee and remand the cause for a new hearing on that issue and amend the judgment to reflect the proper credit.

¶ 3 Defendant was indicted on two counts of aggravated domestic battery, four counts of aggravated battery, one count of obstructing justice, and one count of aggravated driving under the influence of alcohol (DUI). Before trial, the court severed the DUI count and the State dismissed two aggravated battery charges. Following a jury trial, defendant was convicted of the remaining offenses. The court merged the verdicts into one for aggravated domestic battery and sentenced defendant to 25 years' and 4 months' imprisonment.

¶ 4 At the end of the sentencing hearing, the court found that defendant was indigent, but it stated that "the public defender's fees, judgment will be entered on those as Mr. Vega is not capable of paying those."

¶ 5 The judgment order includes an "Assessment of Fines, Fees, Costs, and Restitution." It contains an itemized list of charges totaling \$1456, including a \$750 public defender fee. The form states that defendant is entitled to a \$5-per-day credit for time spent in presentencing custody but does not specify the number of days. A space for that number is blank. However, a separate order states that defendant should receive credit from his initial incarceration on September 29, 2013, until November 4, 2015, or 767 days. A "Judgment Order" states that judgment is entered against defendant for \$1415.62. How that amount was calculated is not clear from the record. Defendant timely appeals.

¶ 6 Defendant first contends that the public defender fee must be vacated outright because it was ordered without a hearing. When a defendant has been represented by a public defender, a

trial court may order the defendant to pay a reasonable fee to reimburse appointed counsel. 725 ILCS 5/113-3.1(a) (West 2014). However, the court must first conduct a hearing within 90 days of sentencing to decide the appropriate amount of the fee. *Id.* The court may not simply impose the fee perfunctorily, but must instead hold a hearing focusing on the costs of representation, the defendant's financial circumstances, and his or her foreseeable ability to pay. *People v. Somers*, 2013 IL 114054, ¶ 14. The court must consider, among other evidence, the defendant's financial affidavit. *Id.* (citing 725 ILCS 5/113-3.1(a) (West 2010)).

¶ 7 In *Somers*, the court considered the proper remedy when a court imposes the fee without a proper hearing. There, the trial court asked the defendant three questions about his finances before imposing the fee. The supreme court held that, where a court holds "some sort of hearing" within the 90-day period, the cause can be remanded for a new hearing. *Id.* ¶¶ 15-17. However, when the court holds no hearing whatsoever, the order imposing the fee should simply be vacated outright. See *id.* ¶ 15. There, the court's questioning of the defendant amounted to some sort of hearing so that the cause could be remanded.

¶ 8 In *People v. Williams*, 2013 IL App (2d) 120094, the trial court, at a transcribed hearing, noted that the public defender had represented the defendant through the preliminary hearing, arraignment, and pretrial stages. The court summarily ordered the defendant to pay \$750 to reimburse the public defender. *Id.* ¶ 4. We held that the proceeding met the definition of a "hearing," as it was a judicial session open to the public held to resolve the issue of the defendant's representation by the public defender. *Id.* ¶ 20 (citing Black's Law Dictionary 788 (9th ed. 2009)).

¶ 9 In *People v. Hardman*, 2017 IL 121453, the court likewise held that some sort of hearing had occurred. There, at the conclusion of the sentencing hearing, the prosecutor reminded the

trial court about its pending motion for a public defender fee. The court asked the assistant public defender how many times she had appeared on the case. Noting that the case had gone to trial, the court found \$500 to be an appropriate fee, but did not inquire about the defendant's ability to pay. Relying on the same definition of "hearing" that we used in *Williams*, the supreme court held that a judicial session occurred at which the issue of whether the defendant should be assessed a public defender fee was considered. The parties were present and the hearing occurred within the 90-day period. *Id.* ¶¶ 64, 66. Thus, a remand for a proper hearing was appropriate. *Id.* ¶ 66. The court noted that *Somers* did not hold that whether the trial court asked questions was dispositive of whether a hearing had occurred. *Id.*

¶ 10 Here, the proceeding was nearly identical to that in *Williams*. At a hearing in open court, the court decided the issue of defendant's obligation to pay a public defender fee. Thus, some sort of a hearing occurred and there is no impediment to a remand for a proper hearing.

¶ 11 We note that defendant did not file a reply brief addressing *Hardman*. He also does not contend that the court's statement that defendant "is not capable of paying those" is dispositive of the issue or precludes a remand. Thus, we vacate the public defender fee but remand for a new hearing on the issue of defendant's obligation to pay a public defender fee.

¶ 12 Defendant next contends that he is entitled to credit for time spent in presentencing custody against the charges properly considered fines. The State confesses error.

¶ 13 A defendant is entitled to a \$5 credit against any fines imposed for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014). The credit applies only to fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). The credit cannot be forfeited by failing to apply for it in the trial court. *People v. Woodard*, 175 Ill. 2d 435, 444-48 (1997).

¶ 14 Here, there is no dispute that defendant was incarcerated for 767 days before trial, giving him a potential credit of \$3835. The trial court entered an order to that effect, but the assessment of fines and fees does not reflect the specific amount of days credited.

¶ 15 Defendant contends that he is entitled to credit against the Children’s Advocacy Center fine, the “arrestee medical” assessment, the circuit clerk’s Operation and Administrative Fund fine, the “county” fine, the drug court fine, the specialty court fine, the State Police operations assessment, and the State Police service assessment, for a total of \$112.38. The State contends only that defendant is not entitled to credit for the \$10 “arrestee medical” assessment, which “shall not be considered a part of the fine for purposes of any reduction in the fine.” 730 ILCS 125/17 (West 2014). We agree. Thus, we amend the judgment to reflect a credit of \$102.38.

¶ 16 The judgment of the circuit court of Lake County is affirmed as modified in part and vacated in part, and the cause is remanded.

¶ 17 Affirmed as modified and vacated in part.

¶ 18 Cause remanded.