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2018 IL App (3d) 160518-U

Order filed October 31, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal Nos. 3-16-0518 and 3-16-0519 Circuit Nos. 15-CF-453 and 15-CF-2830
TERRY J. ZAURATSKY,)	
Defendant-Appellant.)	Honorable David M. Carlson, Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant is entitled to further presentence incarceration credit against his fines.

¶ 2 Defendant, Terry J. Zauratsky, appeals two separate convictions for aggravated driving while under the influence (DUI). For convenience, we have consolidated those separate appeals. Defendant argues that he is entitled to additional credit against his fines based on the time he spent in presentence custody. We agree, vacate the orders imposing monetary assessments in each case, and remand for the circuit court to issue new orders in accordance with this order.

¶ 3
FACTS

¶ 4 On March 5, 2015, the State charged defendant by indictment with Class 2 aggravated DUI (625 ILCS 5/11-501(a)(2), (d)(1)(A) (West 2014)) in case No. 15-CF-453. Defendant was taken into custody on March 9, 2015, and posted \$1500 in bond the same day. The court revoked defendant's bond on August 18, 2015, and he was taken into custody. Six days later, defendant pled guilty to the offense and was sentenced to 24 months' probation and 10 days in jail.

¶ 5 The court issued a signed criminal costs sheet at the time of sentencing. That order imposed a total of \$2957 in monetary assessments. This total was comprised of \$1150 in fines eligible for the \$5 *per diem* credit,¹ a \$1200 probation fee, and \$607 in fees or noneligible fines. The court applied defendant's \$1500 bond, resulting in a final total owed of \$1457.

¶ 6 On December 15, 2015, the State filed a petition to revoke defendant's probation, alleging that defendant had committed the offense of driving while license revoked. Eight days later, defendant was arrested and charged with Class X aggravated DUI (*id.* § 11-501(a)(2), (d)(2)(E)) in case No. 15-CF-2830. On January 28, 2016, the court set defendant's bail at \$500,000 on the two DUI offenses. On May 16, 2016, defendant admitted to the allegations in the State's petition to revoke probation in case No. 15-CF-453 and then proceeded to a bench trial on the Class X offense in case No. 15-CF-2830. The court found defendant guilty. On July 28, 2016, the court sentenced defendant to six years' imprisonment on the Class X offense and a concurrent term of five years' imprisonment on the Class 2 offense. The court continued the matter so the parties could determine defendant's fines, fees, and custody credit.

¹These fines consisted of: a \$1000 DUI fine, a \$30 child advocacy center fee, a \$50 court systems fee, a \$10 specialized court fee, a \$5 drug court fee, a \$30 expungement fee, and a \$25 court appointed special advocates fee (CASA fee). See *People v. Johnson*, 2015 IL App (3d) 140364 (appendix); see also *infra* ¶¶ 12-13 (finding that CASA fee is actually a fine).

¶ 7 On August 19, 2016, the circuit court issued a series of written orders pertaining to defendant’s monetary obligations. In case No. 15-CF-453, the court, noting that defendant’s probation had been revoked, ordered that “the previous Probation Fees ordered are reassessed at \$250, leaving the remaining amount due at \$507.00.” While the court did not issue a new criminal costs sheet in case No. 15-CF-453, a computer-generated printout prepared for this appeal shows defendant owing \$507. The \$507 still owed by defendant is broken down as follows: \$407 remaining on his DUI fine, a \$10 specialized court fee, a \$5 drug court fee, a \$15 CASA fee, a \$30 child advocacy center fee, a \$30 expungement fee, and a \$10 court services operations fee. The court also issued an order indicating that defendant be credited with 216 days served in presentence custody.

¶ 8 In case No. 15-CF-2830, the court issued a signed criminal costs sheet. The court ordered defendant to pay, *inter alia*, a \$1000 DUI fine, a \$30 child advocacy center fee, a \$50 court systems fee, a \$5 drug court fee, a \$10 specialized court fee, and a \$25 CASA fee—\$1120 in total fines. The sentencing order indicated that defendant was entitled to 241 days of presentence custody credit at \$5 per day against his fines.² The court reduced the total of \$1582 by a credit of \$1000, thus ordering defendant to pay \$582 in that case.

¶ 9 ANALYSIS

¶ 10 On appeal, defendant challenges only his monetary assessments. Specifically, he requests that his \$5 *per diem* credit be applied to his outstanding balance in case No. 15-CF-453 and to his remaining fines in case No. 15-CF-2830.

²The criminal costs sheet credited defendant with 240 days of presentence custody credit. We will proceed under the assumption that the sentencing order is correct, though we note that defendant’s presentence custody credit is sufficient to cover his fines in that case whether or not the additional day is counted. See *infra* ¶ 15.

¶ 11 Initially, the State does not dispute the accuracy of the circuit court’s calculation of days defendant spent in presentence custody. The State agrees that defendant can request the \$5 *per diem* credit for the first time on appeal. See *People v. Caballero*, 228 Ill. 2d 79, 88 (2008). The State concedes that every assessment cited by defendant is a fine, with the exception of the CASA fee. Thus, whether the CASA fee is, in fact, a fine is the only dispute on appeal.

¶ 12 Section 5-1101(f-10) of the Counties Code allows “each county in which [CASA] provide services” to adopt a mandatory fee of between \$10 and \$30. 55 ILCS 5/5-1101(f-10) (West 2016). The funds collected from that assessment are to be “deposited into an account specifically for the operations of the Court Appointed Special Advocates.” *Id.* Court appointed special advocates are volunteers acting in cases involving abused, neglected, or dependant minors. See 705 ILCS 405/2-17.1 (West 2016). In *People v. Jones*, 223 Ill. 2d 569, 600 (2006), our supreme court observed that “the most important fact” in determining if a certain assessment is a fine or fee, is whether it “seek[s] to compensate the state for any costs incurred as the result of prosecuting the defendant.” The court added: “This is the *central* characteristic which separates a fee from a fine. A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant’s prosecution.” (Emphasis in original.) *Id.*

¶ 13 Neither of defendant’s DUI cases at issue here involved abused, neglected, or dependant minors. No court appointed special advocate was involved in the prosecution of those cases. Because the CASA fee thus did not compensate the State for any costs incurred, we must construe that assessment as a fine. We note that this is not the first time this court has reached this conclusion. See *Johnson*, 2015 IL App (3d) 140364 (appendix).

¶ 14 Having concluded that the CASA assessment is a fine, we next turn to defendant’s \$5 *per diem* credits. Section 110-14 of the Code of Criminal Procedure provides that a defendant is

entitled to a credit against his fines of \$5 for each day incarcerated. 725 ILCS 5/110-14(a) (West 2016). In case No. 15-CF-453, defendant has an outstanding balance of \$507. Of that total, \$497 represents unpaid fines—only the \$10 court services operations fee is not subject to the credit.³ See *supra* ¶ 7. No \$5 *per diem* credit has ever been applied in that case. The court having credited defendant with 216 days in presentence custody, the ensuing monetary credit of \$1080 is more than enough to cover those fines completely. Accordingly, we vacate the circuit court’s order directing defendant to pay \$507 in that case and remand the matter so the court may enter an order showing that defendant now owes \$10.

¶ 15 In case No. 15-CF-2830, \$1120 in fines were assessed against defendant. See *supra* ¶ 8. Though he was credited with 241 days in presentence custody in that case (translating to a \$1205 monetary credit), defendant’s fines were only offset by \$1000. Because \$1205 is enough to offset defendant’s fines in their entirety, he is entitled to an additional \$120 credit in that case. Accordingly, we vacate the circuit court’s order directing defendant to pay \$582 in that case and remand the matter so the court may enter an order showing defendant now owes \$462.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is vacated in part and remanded with directions.

¶ 18 Vacated in part.

¶ 19 Remanded with directions.

³We recognize that the computer generated printout showing a \$15 CASA fee is at odds with the court’s written order imposing a \$25 assessment. Defendant’s *per diem* credit, however, is more than enough to cover that fine in either amount.