2019 IL App (1st) 160917-U

No. 1-16-0917

Order filed March 6, 2019

Third Division

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. 12 CR 14828
	)	
TERRANCE DENHAM,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for first-degree murder affirmed. Conviction should not be reduced to second-degree murder based upon defendant's unreasonable belief in the need to use deadly force in self-defense. Defendant's 60-year sentence is not excessive nor a *de facto* life sentence. Fines and fees order modified.

¶ 2 Following a jury trial, defendant Terrance Denham was found guilty of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) and sentenced to 60 years' imprisonment, which included a 25-year enhancement for personally discharging a firearm that proximately caused

death (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012)). He was also assessed fines and fees in the amount of $774. On appeal, defendant argues his conviction should be reduced to second-degree murder because he subjectively believed, albeit unreasonably, that he needed to act in his own self-defense. He further asserts his sentence is both excessive and constitutes an impermissible *de facto* life sentence, and various fees are actually fines subject to offset by presentence incarceration credit. We affirm defendant's conviction and sentence and modify the fines and fees order.

¶ 3 Defendant went to a jury trial on two counts of first-degree murder. The evidence at trial was as follows. On July 10, 2012, Deborah White and her daughter, Natley White, were driving near a gas station in the area of Garfield Boulevard and Wabash Avenue. Deborah observed a man standing at a bus stop near the gas station and another man wearing a black-and-turquoise-striped hooded sweatshirt approaching the first man. The men were not facing each other but were facing Deborah. Deborah and Natley heard two gunshots and saw a man fall to the ground. The man wearing the striped hooded sweatshirt ran in front of Deborah's car into a red apartment building off Garfield. Deborah called 911 and drove over to assist the man who had been shot. Later that day, Deborah and Natley went to the police station and separately identified defendant as the man wearing the hooded sweatshirt running from the shooting. They further identified defendant in court.

¶ 4 Nicole Walker was in her car and stopped at a traffic light near the gas station on July 10, 2012, when she heard a gunshot. Walker saw a man wearing a dark hooded sweatshirt with bright blue stripes standing with his arm out. Another man was staggering and fell to the ground. The man in the sweatshirt ran across the street, and Walker called 911. Walker pulled over to

help the man on the ground and spoke with police that arrived on the scene. In total, Walker heard "maybe three" gunshots.

¶ 5 Carlos Biveros worked at the gas station on Garfield and Wabash. He was working outside on a car when he observed a man in a black and blue striped hooded sweatshirt shoot at another person. The shooter fled the scene into a nearby apartment building. The gas station has security cameras, and Biveros identified footage taken from those cameras at the time of the shooting. The footage contained two separate camera recordings taken from different angles and was published for the jury. Biveros identified himself and the car he was working on in the footage, and pointed out where he saw the victim fall to the ground.

¶ 6 The first angle of the video depicts the outside of the gas station, including two gas pumps. Cars and individuals are entering and leaving the gas station and lot. Eventually, towards the top of the video, an individual is seen walking but suddenly drops to the ground. A gas pump obstructs the upper half of the individuals' body, allowing only the legs to be seen. Another person is seen running away across the street.

¶ 7 The second angle depicts several cars outside the service area of the gas station. Both Garfield and Wabash are visible in the video. Two individuals are sitting on a bench outside the service area, one individual is leaning over one of the cars, and another individual is wiping the windows of a different car. Various cars and individuals enter and leave the gas station. At one point a person is seen crossing the street, but the footage is not continuous and appears to skip in time.

¶ 8 Chicago police officer Darryl Hardy responded to the scene of the shooting and was given a physical description of the offender. Hardy and his partner received information about

the offender's flight from the scene and went to the courtyard apartment building near Garfield and Wabash. Hardy and his partner canvassed the building and ultimately were allowed into a second-floor apartment by a young woman holding a small child. Hardy opened the back door of the apartment and saw defendant, whom he identified in court, standing alone on the rear porch.

¶ 9 Hardy arrested defendant. A search of his person led to the recovery of 19 bags of suspect cannabis from his pants. Hardy further recovered a black and blue hooded sweatshirt from a couch inside the apartment. Defendant's hand tested positive for gunshot residue, and his DNA could not be excluded from the DNA profile recovered from the black and blue hooded sweatshirt.

¶ 10 Chicago police officer Nieto responded to the shooting at Garfield and Wabash with Officer Rotunda and secured the scene. Emergency medical technicians were tending to the victim, Phillip Finley, and eventually transported him away. Nieto observed three shell casings, but no gun, in the area where Finley was found. These shell casings were later determined to be 9-millimeter and to have been fired from the same gun.

¶ 11 Finley was later pronounced dead as a result of his gunshot wounds. He had multiple gunshot wounds, including one in his back, and a medical examiner determined his cause of death to be homicide.

¶ 12 Chicago police sergeant John Foster interviewed defendant, whom he identified in court, at the police station about Finley's murder. The interview room contained audio and video equipment, which recorded defendant the entire time he was in the interview room. Foster provided defendant with his *Miranda* warnings, and defendant agreed to speak with Foster. Defendant initially denied knowing anything about the shooting at the gas station. Later that

night, defendant admitted that he was "selling something" in the area of the shooting but still denied any knowledge of the shooting. The following day, defendant was again provided with his *Miranda* warnings. He told Foster that he had shot Finley, including once or twice while Finley was already lying on the ground.

¶ 13 Two recorded video interviews between Foster and defendant were admitted into evidence and played for the jury. In the first video, defendant tells Foster that he was in the area selling "weed" when he saw Finley walking. Defendant retrieved a gun from a nearby garbage can and ran across the street towards the gas station and Finley. Finley tried to run when he saw defendant's gun. Defendant shot Finley "three or four" times, including when defendant was on the ground, and fled the scene.

¶ 14 In the second video, defendant tells Foster that Finley had previously "jumped" him, and shows Foster scabs on his knees. Defendant explains that he did not want to kill Finley but, instead, "hit" him in the leg. Defendant states that he went toward the gas station and waited for Finley to pass him. Finley saw the gun, tried to run, and defendant shot him.

¶ 15 Assistant State's Attorney Kim Ward conducted an interview of defendant. This interview was recorded. The recording was admitted into evidence and published to the jury. In the video, Ward provides defendant his *Miranda* warnings in the presence of Foster. Defendant tells Ward that he shot Finley. He states that Finley was trying to run when defendant shot him "two" times, explaining that Finley had his foot out to run. Finley fell and defendant shot at him a couple more times. Defendant tells Ward that he was not trying to kill Finley but wanted to just shoot him in the leg. He admits that he shot Finley in retaliation for Finley jumping him.

¶ 16 Defense witness Officer Rotunda testified that she responded with Officer Nieto to the scene of the shooting. She spoke with Deborah White, who told her that Deborah saw defendant and the victim "standing talking" in the lot of the gas station before the shooting.

¶ 17 Defendant testified that the area around Garfield and Wabash consisted of "all types of gangs," including the "Bully Boys" and the "Black Gate." After defendant lost his job at a nearby restaurant, a member of the Bully Boys allowed him to sell drugs for a living, even though defendant was not a member of the gang. Sometime in June 2012, around midnight, defendant was walking down Garfield when Finley and two other men walked past him. Defendant turned around and was hit in the jaw by Finley. Defendant and Finley began fighting, and the two other men punched and kicked defendant. Defendant testified that Finley was bigger and stronger than him. Eventually, the fight ended and Finley and the men walked away.

¶ 18 On July 10, defendant was selling marijuana in the area of Garfield and State when he saw Finley walking down the street. Defendant "got mad" when he saw Finley and wanted to "jump on him back." Defendant did not want to start a gang war by getting friends to "jump" Finley. Instead, defendant wanted to speak with Finley, and he retrieved a 9-millimeter semiautomatic gun from behind a garbage can for protection. Defendant walked over to Finley, believing Finley was armed with a gun.

¶ 19 Defendant saw Finley walking towards a bus stop, so he went to the bus stop at the corner of Garfield and Wabash to wait for him. As Finley approached, defendant "stood straight" with his hands to his sides and attempted to start a conversation with him. Finley gave defendant an angry look and "reached for his belt buckle," which defendant believed meant Finley was reaching for a gun. Defendant feared for his life. He thought Finley was going to kill him. He

pulled out his gun, despite not knowing whether Finley had a gun. Defendant shot Finley three times and ran to a nearby building where he was later arrested.

¶ 20 Defendant admitted that he initially told police he had no knowledge of the shooting. He acknowledged he later told them he went "there" to kill Finley, but stated this was not true. He explained he did not tell the truth because "they wasn't going to believe nothing I said in the first place."

¶ 21 On cross-examination, defendant explained that Finley was still standing when defendant fired the last two shots. Defendant explained that it would have been "aggressive" to directly approach Finley, which was why he instead waited for Finley to walk to him at the bus stop. Defendant acknowledged that he never told Ward that Finley was reaching for his belt buckle or pants before defendant shot him.

¶ 22 After the defense rested, defendant asked for, and received, second-degree murder and self-defense instructions. Defense counsel argued in closing, among other things, that defendant acted with an unreasonable belief in the need to use deadly force, such that he should be found guilty of second-degree murder. The jury found defendant guilty of first-degree murder, including a special finding that defendant had personally discharged a firearm that proximately caused the death of Finley.

¶ 23 Defendant filed a written motion for a new trial, arguing, among other things, that he should have been allowed to testify to Finley's gang affiliation, violent nature, and propensity to carry guns. Defendant contended this testimony was highly relevant to his self-defense and second-degree murder argument. Defendant did not contend his conviction should be reduced to

second-degree murder based on the evidence presented at trial. The trial court denied the motion and proceeded to sentencing.

¶ 24 At the sentencing hearing, the State offered the testimony of Wanda Monique Finley in aggravation. Wanda testified that she is the older sister of the victim, Phillip Finley, and explained the "devastation" Finley's murder caused her family. She noted that defendant's actions "mentally and emotionally and physically destroyed" her mother, who is now "angry, bitter, withdrawn, and depressed." Wanda testified that Finley's son "will never know what it is like to love his father." She spoke of her own issues with alcoholism and depression because of defendant's actions.

¶ 25 Defense witness in mitigation Brittany Henderson testified that she is defendant's younger sister and explained that defendant was "loving and caring," had never been violent, and had been a good father to his children.

¶ 26 The State argued in aggravation that defendant committed the murder as an "ambush" and "laid in wait," without any immediate provocation. It noted that defendant shot Finley a second time when he was on the ground and. in order to hide the gun, fled into an apartment building where people, including a child, were living. The State pointed out defendant had a prior conviction for burglary in Indiana and asked the court to sentence defendant to the "maximum."

¶ 27 In mitigation, defense counsel argued defendant's criminal background consisted of a single burglary conviction and no crimes of violence. Counsel pointed out that defendant "was in his early 20's," trying to take care of his girlfriend and young child by working at a pizza restaurant. Counsel argued that defendant was fearful of Finley because of past encounters and

the incident was "spur of the moment" and not planned. Counsel asked for the minimum sentence of 45 years' imprisonment to allow defendant to be released when he is an "elderly man."

¶ 28 In allocution, defendant apologized and stated that he did not intend to kill Finley "in cold blood." Defendant further apologized to his family for "putting them through this."

¶ 29 The trial court merged the first-degree murder counts and sentenced defendant to 60 years' imprisonment on one count of first-degree murder, "after taking into consideration all of the factors in aggravation and mitigation." The court further stated: "I had the opportunity to review the presentence investigation, the defendant's family and educational background, work history, social history. I have considered his rehabilitative potential, the fact that the defendant was on probation for the burglary out of Indiana at the time of that [*sic*] this occurred. The court has considered the facts of the case." The court imposed fines and fees in the amount of $774 and awarded defendant 1333 days of presentence incarceration credit.[1]

¶ 30 Defendant filed a written motion to reconsider sentence, alleging, among other things, the sentence was excessive based on "defendant's background and the nature of his participation in the offense." At the hearing on the motion, defense counsel argued that defendant's 60-year sentence constituted a "*de facto* life sentence" as defendant was "22 years' old" when the offense

[1] We note that the mittimus reflects defendant was awarded 1336 days of presentence incarceration credit. However, the trial court explicitly stated that defendant would be credited with 1333 days. The court's oral pronouncement is the court's judgment, and it controls over the mittimus. *People v. Lucious*, 2016 IL App (1st) 141127, ¶ 62.

took place.[2] Further, counsel noted defendant's minimal criminal background. The court denied the motion to reconsider sentence. Defendant filed a timely notice of appeal.

¶ 31 On appeal, defendant argues that his conviction should be reduced to second-degree murder where he subjectively, but unreasonably, believed he needed to act in self-defense. He further contends his 60-year prison sentence constitutes a *de facto* life sentence and is excessive, and that the fines and fees order should be modified.

¶ 32 A person commits second-degree murder when he commits first-degree murder and a mitigating factor exists. 720 ILCS 5/9-2(a) (West 2012). After the State proves the elements of first degree murder beyond a reasonable doubt, the burden shifts to the defendant to show, by a preponderance of the evidence, the existence of one of the mitigating factors for second-degree murder. *People v. Jeffries*, 164 Ill. 2d 104, 128 (1995).

¶ 33 Here, defendant does not challenge the evidence supporting first-degree murder. Rather, he asserts that he presented sufficient proof of a mitigating factor to support a reduction of his conviction to second-degree murder. Specifically, he contends that he acted on an unreasonable belief that deadly force was necessary in self-defense against the victim.

¶ 34 The second-degree murder statute provides, in relevant part, that a mitigating factor is proved if "[a]t the time of the killing [the defendant] believes the circumstances to be such that, if they existed, would exonerate the killing under the principles stated in Article 7 [of the Criminal Code of 2012], but [the defendant's] belief is unreasonable." See 720 ILCS 5/9-2(a)(2) (West 2012); accord *Jeffries*, 164 Ill. 2d at 113 (noting this theory refers to "imperfect self

[2] Born on June 14, 1991, defendant was actually 21 years old at the time of the July 10, 2012, offense.

defense," as evidence exists that defendant believed he was acting in self defense, but belief was objectively unreasonable).

¶ 35 Self-defense is established when the following factors are present: "(1) force is threatened against a person, (2) the person is not the aggressor, (3) the danger of harm was imminent, (4) the threatened force was unlawful, (5) the person actually and subjectively believed a danger existed that required the use of force applied, and (6) the person's beliefs were objectively reasonable." *People v. Washington*, 2012 IL 110283, ¶ 35. After the defendant raises the issue of self-defense, the State, to sustain a charge of first-degree murder, must prove beyond a reasonable doubt that one of the six factors was not present. *People v. Castellano*, 2015 IL App (1st) 133874, ¶ 149. "However, to be found guilty of second-degree murder, *the defendant* must prove by a preponderance of the evidence that all of the first five factors were present." (Emphasis in original.) *Id.*

¶ 36 "[T]he elements of first degree and second degree murder are identical, and it is the presence of statutory mitigating factors that reduces an unlawful homicide from first degree to second degree murder." *People v. Thompson*, 354 Ill. App. 3d 579, 587 (2004). Whether the defendant's conduct was committed under mitigating circumstances is a question of fact. *Castellano*, 2015 IL App (1st) 133874, ¶ 144. We will not reverse that determination by the trier of fact if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the mitigating factors were not present." *People v. Blackwell*, 171 Ill. 2d 338, 358 (1996).

¶ 37 Here, defendant argues he acted with an actual, though unreasonable, belief that he had to defend himself against Finley. He points to the confrontation he had with Finley two weeks

previously, when Finley punched him in the jaw. However, the evidence at trial militates against a finding that defendant acted in imperfect self-defense.

¶ 38 The evidence showed that defendant saw Finley, retrieved a gun, shot Finley multiple times, and fled. Defendant initially told police he had no knowledge of the shooting. He later changed his story and admitted he shot Finley multiple times. Specifically, he stated that, before he shot Finley, Finley began to run, which would contradict defendant's assertion that he acted in self-defense. The fact that defendant shot Finley as Finley ran away is corroborated by the bullet in Finley's back. Notably, when speaking to both Foster and Ward, defendant never asserted that he feared imminent harm from Finley. It was only when defendant testified at trial that he asserted for the first time that Finley gave him an angry look and reached for his belt buckle, causing defendant to fear for his life. Viewing this evidence, specifically defendant's own statements that he shot Finley after Finley began to run, a reasonable jury could have rejected defendant's contention that he acted in self-defense.

¶ 39 Defendant's argument predominantly relies on his assertion that his testimony that he was in fear of Finley was true and uncontroverted. But his testimony was contrary to his own statements to Foster and Ward, during which he admitted that he shot Finley in retaliation, that Finley attempted to run from defendant, and that defendant shot Finley when he was on the ground. And even if defendant's trial version of events—specifically Finley's alleged reach towards his belt buckle—was unrebutted, the jury was still free to reject it. See *People v. Martin*, 271 Ill. App. 3d 346, 352 (1995) (jury "is not compelled to believe defendant's version of the events surrounding the homicide even if uncontradicted."). The jury heard all the evidence, was instructed on both self-defense and second-degree murder, and returned a finding

of guilty of first-degree murder. It was the jury's responsibility to weigh the evidence and any inferences derived therefrom, determine the credibility of witnesses, and resolve any conflicts in the evidence. *People v. Kidd*, 2014 IL App (1st) 112854, ¶ 27. Viewing the evidence in the light most favorable to the State, the jury could have reasonably concluded that defendant did not act under an unreasonable belief in the need for self-defense when he shot Finley. See *Blackwell*, 171 Ill. 2d at 358.

¶ 40 Defendant relies on various articles and secondary sources in support of his contention that his reaction to Finley's perceived threat was an unfortunate, but common, symptom of gang-infested areas. These materials were not presented in the trial court. We decline to consider the secondary sources and articles, as they are not relevant authority on appeal and, moreover, were not presented to the trial court. See *People v. Heaton*, 266 Ill. App. 3d 469, 477 (1994). Moreover, no secondary source changes the fact that defendant admitted to Foster that he shot Finley in retaliation and as Finley attempted to run away. Accordingly, we affirm defendant's conviction for first-degree murder.

¶ 41 Defendant next argues the trial court abused its discretion where it failed to adequately consider mitigating evidence in imposing a 60-year "*de facto* life sentence."

¶ 42 The trial court has broad discretion in imposing a sentence and where that sentence falls within the range provided by statute, it will not be altered absent an abuse of discretion. *People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010). An abuse of discretion exists where the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000) (citing *People v. Fern*, 189 Ill. 2d 48, 54 (1999)). The trial court is in the superior position to determine an appropriate

sentence because of its personal observation of defendant and the proceedings. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). It must weigh the relevant sentencing factors, which include the defendant's demeanor, credibility, social environment, age, mentality, and moral character. *People v. Snyder*, 2011 IL 111382, ¶ 36.

¶ 43 We find the trial court did not abuse its discretion in imposing a 60-year prison sentence. The offense of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) is punishable by imprisonment of 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2012). When, as here, there is a finding that a defendant personally discharged a firearm that proximately caused death, an enhancement of 25 years to natural life shall be added to the sentence. See *id.*; 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012). Defendant's 60-year sentence falls within this statutory range of 45 years to natural life, and we therefore presume it is proper. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 44 Defendant argues that the trial court failed to properly weigh certain factors in mitigation. He asserts that the trial court failed to consider his age, minimal criminal history, expressed remorse, and that "[t]here were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense" before imposing sentencing. We disagree.

¶ 45 A sentence must reflect both the seriousness of the offense and the objective of restoring the offender to useful citizenship. *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27; Ill. Const. 1970, art. I, § 11. The seriousness of the offense, and not mitigating evidence, is the most important sentencing factor. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. The defendant

"must make an affirmative showing the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Defendant fails to make that showing here.

¶ 46 The record shows the trial court was aware of the seriousness of the offense, as it presided over the trial and thus heard the evidence that defendant approached Finley for retaliation and shot Finley in the back as he ran away. It also shows the court considered these mitigation factors, as they were presented in the PSI report, defense counsel's argument in mitigation, and defendant's allocution. Further, the trial court explicitly stated that it had considered "all the factors in aggravation and mitigation." See *People v. Powell*, 2013 IL App (1st) 111654, ¶ 32 ("[t]he trial court is not required to detail precisely for the record the exact process by which the penalty was determined or articulate its consideration of migrating factors"). As this mitigating evidence was presented to the trial court, it is presumed that the court considered it absent some indication to the contrary. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19. Defendant does not affirmatively show the trial court failed to consider these factors.

¶ 47 In arguing the trial court failed to properly consider his age, defendant asserts the 60-year sentence constitutes a *de facto* life sentence. The court clearly considered this argument. At the sentencing hearing, defense counsel stated that defendant "was in his early 20's" trying to take care of his girlfriend and young child. At the hearing on defendant's motion to reconsider sentence, defense counsel explicitly argued that the sentence constituted a *de facto* life sentence. The court was well-aware of defendant's age and reconsidered the sentence imposed in light of counsel's contention.

¶ 48 The presentence investigation (PSI) report indicated that defendant was born on June 14, 1991, which would have made him 21 years old at the time of the July 10, 2012 murder. Therefore, defendant was not a juvenile, and we do not find the sentence to be a *de facto* life sentence. See *People v. Thomas*, 2017 IL App (1st) 142557, ¶¶ 25-28 (finding 18-year-old defendant, sentenced to 80 years' imprisonment, was an adult and rejecting reliance on cases where juvenile offenders received *de facto* life sentences); but see *People v. Harris*, 2016 IL App (1st) 141744, ¶¶ 52-54, 76 (finding 18-year-old defendant's 76-year sentence to be *de facto* life sentence and remanding for resentencing), *pet. for leave to appeal allowed*, No. 121932 (May 24, 2017). And given that the jury found defendant guilty of personally discharging a firearm causing death, the court could have sentenced him to up to natural life imprisonment. See 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2012). But, instead, the trial sentenced him to a term of years. We are mindful that defendant's sentence is lengthy, but it does not constitute a *de facto* life sentence.

¶ 49 We reject defendant's reliance on *People v. House*, 2015 IL App (1st) 110580, in support of his contention that he received a *de facto* life sentence. In *House*, a 19-year-old defendant, who was sentenced to mandatory natural-life imprisonment after being convicted of first-degree murder on an accountability theory, brought a postconviction petition for relief. *House*, 2015 IL App (1st) 110580, ¶¶ 3, 34, 82, 89. This court vacated defendant's sentence and remanded for a new sentencing hearing, finding the initial sentence violated the proportionate penalties clause of the Illinois Constitution as applied to defendant. *Id.* ¶¶ 103-04. The court found that, although the defendant was not a juvenile, he was "still a teenager," and there were significant mitigating factors, including that the defendant was acting as a lookout and was convicted under an

accountability theory. *Id.* ¶¶ 89, 101. It noted the trial court's inability to consider the goal of rehabilitation in imposing mandatory natural-life imprisonment and concluded the mandatory life sentence "shocks the moral sense of the community." *Id.* ¶ 101.

¶ 50 Unlike in *House*, defendant was 21 years old when the murder occurred and, therefore, no longer a teenager. Further, defendant here was not merely a lookout but purposefully and personally discharged the firearm that caused the death resulting in his first-degree murder conviction. See *Thomas*, 2017 IL App (1st) 142557, ¶ 34 (distinguishing *House* on this point); see also *People v. Ybarra*, 2016 IL App (1st) 142407, ¶ 27 (distinguishing *House* and affirming 20-year-old defendant's mandatory natural-life sentence). Lastly, unlike in *House*, the trial court had discretion to impose a sentence of a term of years and, after consideration of mitigating factors, did so. Accordingly, *House* is distinguishable.

¶ 51 Defendant next contends that his sentence should be vacated because the trial court failed to articulate its reasons for imposing a 60-year prison sentence in accordance with section 5-4.5-50(c) of the Uniform Code of Corrections (730 ILCS 5/5-4.5-50(c) (West 2012)). This section states:

> "The sentencing judge in each felony conviction shall set forth his or her reasons for imposing the particular sentence entered in the case, as provided in Section 5-4-1 (730 ILCS 5/5-4-1). Those reasons may include any mitigating or aggravating factors specified in this Code, or the lack of any such factors, as well as any other mitigating or aggravating factors that the judge sets forth on the record that are consistent with the purposes and principles of sentencing set out in this Code." 730 ILCS 5/5-4.5-50(c) (West 2012).

¶ 52 Our supreme court has determined the statute does not impose an independent duty on the trial court to articulate the reasons for a particular sentence. See *People v. Davis*, 93 Ill. 2d 155, 162-63 (1982). Defendant acknowledges *Davis* but suggests the supreme court's reasoning therein is flawed and points to concurring and dissenting opinions in *People v. Bryant*, 2016 IL App (1st) 140421, and *People v. Jackson*, 375 Ill. App. 3d 796 (2007), for support. *Davis*, as an Illinois Supreme Court decision, is controlling authority and binding on all lower courts in the state. See *People v. Artis*, 232 Ill. 2d 156, 164 (2009) ("The appellate court lacks authority to overrule decisions of [the supreme court], which are binding on all lower courts"). Accordingly, based on *Davis*, the trial court did not have to articulate the reasons for defendant's 60-year prison sentence.

¶ 53 Finally, defendant argues several fees are actually fines subject to presentence incarceration credit. Defendant did not raise his challenge to the fines and fees in the trial court but asserts it is reviewable as plain error. The State agrees that we may address the merits of defendant's challenges to the fines and fees order pursuant to the plain-error doctrine. Because the State fails to argue against defendant's forfeiture of the issue, we will address the merits of defendant's challenge to the fines and fees. See *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46 ("The rules of waiver also apply to the State, and where, as here, the State fails to argue that defendant has forfeited the issue, it has waived the forfeiture"). We review *de novo* the propriety of a court-ordered fine or fee. *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 54 A defendant incarcerated on a bailable offense who does not post bail and against whom a fine is imposed is allowed a $5 credit for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2012). Whether a charge is characterized as a fine or a fee depends upon its

purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Fees reimburse the State "for a cost incurred in the defendant's prosecution." *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63. On the other hand, fines are punitive in nature and are "part of the punishment for a conviction." *Id.* Here, defendant spent 1333 days in presentence incarceration and, thus, is entitled to a credit of $6665 to offset certain fines.

¶ 55 Defendant argues, and the State correctly concedes, the $15 state police operations charge (705 ILCS 105/27.3a(1.5) (West 2012)) is a fine subject to presentence incarceration credit. See *People v. Brown*, 2017 IL App (1st) 150146, ¶ 36 (finding the $15 state police operations charge to be a fine subject to offset by the credit). Defendant is therefore entitled to offset the $15 state police operations charge with presentence incarceration credit.

¶ 56 Defendant contends the $190 felony complaint fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), the $15 clerk automation fee (705 ILCS 105/27.3a(1) (West 2012)), the $15 document storage fee (705 ILCS 105/27.3c(a) (West 2012)), and the $25 court services fee (55 ILCS 5/5-1103 (West 2012)) are fines subject to presentence incarceration credit. This court has already considered challenges to these assessments and determined they are fees and, therefore, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42 (relying on *Tolliver* and finding the $190 felony complaint fee to be a fee), *pet. for leave to appeal allowed*, No. 122008 (May 24, 2017); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (finding clerk automation fee and document storage fee are fees not subject to offset by presentence incarceration credit); *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (relying on *Tolliver* and finding the $25 court services charge is a fee not subject to offset by presentence incarceration credit).

¶ 57 Defendant argues *Tolliver* was decided before our supreme court's decision in *People v. Graves*, 235 Ill. 2d 244 (2009), and its analysis is contrary to that of our supreme court and thus no longer persuasive. We disagree. *Graves* held that, for an assessment to be characterized as a fee, it must reimburse the State for some costs incurred in prosecuting the particular defendant. *Graves*, 235 Ill. 2d at 250. This court used the same reasoning in *Tolliver*, finding the charges "compensatory and a collateral consequence of defendant's conviction and, as such, are considered 'fees' rather than 'fines.' " *Tolliver*, 363 Ill. App. 3d at 97; see also *Brown*, 2017 IL App (1st) 142877, ¶ 81. Accordingly, we hold that these charges are fees not subject to offset by presentence incarceration credit

¶ 58 Similarly, notwithstanding defendant's assertion to the contrary, the $2 State's Attorney Records Automation Fund fee (55 ILCS 5/4-2002.1(c) (West 2012)) and the $2 Public Defender Records Automation Fund fee (55 ILCS 5/3-4012 (West 2012)) are both fees, not fines, because they are meant to reimburse the State for expenses related to automated record-keeping systems and thus, are not subject to presentence custody credit. See *Brown*, 2017 IL App (1st) 142877, ¶¶ 75-78 (compiling cases); *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65. Although we recognize that *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, found these assessments to be fines, we follow *Brown* and *Bowen*. Accordingly, the State's Attorney Records Automation Fund charge and the Public Defender Records Automation Fund charge are fees not subject to offset by presentence custody credit.

¶ 59 For the reasons set forth above, we find the $15 state police operations charge is a fine, subject to offset by presentence incarceration credit. We direct the clerk of the circuit court to

modify the fines and fees order accordingly. We affirm the judgment of the circuit court of Cook County in all other respects.

¶ 60 Affirmed as modified.