

2019 IL App (1st) 161751-U

No. 1-16-1751

Order filed March 27, 2019

Third 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. 13 CR 19993
	)	
ABE NASSAR,	)	Honorable
	)	Colleen A. Hyland,
Defendant-Appellant.	)	Judge, presiding.

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

**ORDER**

¶ 1 *Held:* We order the fines, fees and costs order modified.

¶ 2 Following a jury trial, defendant Abe Nassar was convicted of identity theft (720 ILCS 5/16-30(a)(5) (West 2012)) and possession of an altered or counterfeit card (720 ILCS 5/17-41(a)(i) (West 2012)). The court sentenced defendant to concurrent prison terms of four years and three years. On appeal, defendant challenges various fines and fees imposed by the trial court. For the following reasons, we order the fines, fees, and costs order corrected.

¶ 3 Because defendant does not challenge his conviction or sentence, we recite only those facts necessary to our disposition. A jury found defendant guilty of identity theft and possession of altered or counterfeited credit cards. The evidence at trial established police found him in possession of, among other things, two “card readers” and more than a dozen credit cards with magnetic strips that did not match the information printed on the front of the cards. The court sentenced defendant to four years’ imprisonment for identity theft and three years’ imprisonment for possessing altered or counterfeited credit cards. The court imposed \$577 in fines and fees. Following a denial of his motion to reconsider sentence, defendant timely appealed.

¶ 4 On appeal, defendant contests several fines and fees imposed by the trial court. Defendant concedes that he did not preserve this issue before the trial court, but argues that fines and fees issues are reviewable under the second prong of the plain error doctrine. The State agrees that the order should be corrected. Accordingly, the State has forfeited any argument regarding defendant’s forfeiture, and we will consider defendant’s claims. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). We review *de novo* the propriety of court-ordered fines and fees. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 5 The parties correctly agree that the \$5 electronic citation fee should be vacated. Because defendant was not convicted in “any traffic, misdemeanor, municipal ordinance, or conservation case,” we vacate the \$5 electronic citation fee. See 705 ILCS 105/27.3e (West 2016).

¶ 6 Next, defendant argues that several assessed fees are instead fines that should be offset by his \$5 per day presentence incarceration credit.

¶ 7 The trial court imposed on defendant \$577 in fines, fees and costs. Section 110-14 of the Code of Criminal Procedure of 1963 (the Code) provides that a defendant is entitled to a credit of \$5 toward his fines for each day he was incarcerated on a bailable offense prior to sentencing. 725 ILCS 5/110-14(a) (West 2016). The Code provides that “the credit applies only to ‘fines’ that are imposed pursuant to a conviction, not to any other court costs or fees.” *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). Whether an assessment is a fine or a fee depends on its purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Fees are “intended to reimburse the state for a cost incurred in the defendant’s prosecution,” while fines are punitive in nature and “part of the punishment for a conviction.” *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63 (citing *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). The record reflects that defendant was entitled to credit for 562 days for presentence incarceration. He therefore has \$2810 (562 days multiplied by \$5) credit available toward his fines.

¶ 8 Defendant argues, and the State concedes, that the \$15 State Police operations charge (705 ILCS 105/27.3a(1.5) (West 2016)) and the \$50 court system charge (55 ILCS 5/5-1101(c)(1) (West 2016)) are actually fines that should be offset by defendant’s presentence incarceration credit. We agree that both of these assessments are fines because they do not reimburse the State for expenses incurred in defendant’s prosecution. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (“the State Police Operations Assistance fee does not reimburse the State for costs incurred in defendant’s prosecution”); *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21 (awarding defendant credit for court system fee imposed under section 5-1101(c) of Counties Code, stating, “Most important, the assessment is not intended or geared to compensate the State (or the county) for the cost of prosecuting a defendant.”).

¶ 9 Defendant next asserts that his presentence incarceration credit should apply to various other charges. Among them are (1) the \$190 felony complaint clerk charge (705 ILCS 105/27.2a(w)(1)(A) (West 2016)), (2) the \$25 clerk automation charge (705 ILCS 105/27.3a(1) (West 2016)), (3) the \$25 document storage charge (705 ILCS 105/27.3c(a) (West 2016)), and (4) the \$2 State's Attorney's records automation charge (55 ILCS 5/4-2002.1(c) (West 2014)). He claims that all of these charges are properly classified as "fines." But after the briefing was concluded in this appeal, the supreme court held that each of these charges are fees, not fines. *People v. Clark*, 2018 IL 122495, ¶¶ 27, 34, 41, 49. So they are not subject to presentence credit.

¶ 10 Accordingly, we vacate the \$5 electronic citation fee. The \$15 State Police operations and \$50 court systems assessments are fines that should be offset by defendant's presentence custody credit. We order the clerk of the circuit court to modify the fines, fees and costs order accordingly. The judgment of the circuit court is affirmed in all other respects.

¶ 11 Affirmed; fines, fees, and costs order modified.