2019 IL App (1st) 162560-U

SIXTH DIVISION
February 22, 2019

No. 1-16-2560

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. 13 CR 3562
	)	
SHAWN WARD,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant knowingly and voluntarily waived his right to a jury trial. The court did not abuse its discretion in imposing a 28-year sentence for robbery. Defendant's mittimus and fines and fees order are corrected.

¶ 2 Following a bench trial, defendant Shawn Ward was found guilty of robbery and sentenced to 28 years' imprisonment. On appeal, he argues that his jury waiver was invalid because the trial court failed to properly admonish him on his right to a jury trial, and in the alternative, that his sentence was excessive. Defendant also contends that the mittimus should be

corrected to reflect the correct offense, and that his fines and fees order should be corrected in several respects. We affirm defendant's conviction, and correct the mittimus and fines and fees order.

¶ 3 Defendant was charged by indictment with one count of armed robbery (720 ILCS 5/18-2(a)(1) (West 2012)) and one count of aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2012)) arising from an incident on January 28, 2013, in which he was alleged to have detained and taken property from Ahmed Abukalifeh while armed with a deadly weapon.

¶ 4 Prior to trial, defendant alternated several times between requests for a bench trial and a jury trial. Defendant first demanded a bench trial at a hearing on February 6, 2014, doing so personally in open court while represented by counsel. On March 13, 2015, defense counsel requested a jury trial, although the transcript of proceedings does not show that defendant was present in court at the time. On May 11, 2015, defendant again personally demanded a bench trial, prompting defense counsel to state, "I guess my client is asking for a bench trial."

¶ 5 On August 18, 2015, defendant discharged his attorney and elected to proceed *pro se*. The court admonished defendant on that date and at several times throughout the proceedings about the seriousness of the charges against him, and strongly encouraged him to accept the appointment of a public defender. However, defendant claimed to be "well-versed" in the "procedures of the law," and frequently asked the court to issue orders granting him access to the jail's law library.

¶ 6 While challenging the court's jurisdiction at an October 16, 2015 hearing, defendant stated, "if this is a lawful courtroom I should have a jury trial by a jury of my peers." The court responded that, "if you elect to have a jury trial we will select a jury and the victim will be called

to testify in front of that jury." When defendant inquired about who would sit on a potential jury, the court informed him that it would be composed of his "peers as defined by the Illinois constitution and *** state statutes." Defendant reiterated his request for a jury trial at a November 18, 2015 hearing. However, on December 10, 2015, defendant stated, "I would like to change my trial theme from a jury to a bench trial." On December 30, 2015, defendant requested a jury trial.

¶ 7 Finally, on January 5, 2016, defendant again demanded a bench trial, and this colloquy followed:

> "THE COURT: You just indicated you would like to switch your election for the type of trial from a jury trial to a bench trial. I want*** you to understand during a jury trial you and the state's attorney will select twelve people who will listen to the evidence and decide whether you are guilty. By requesting a bench trial you are asking this court to make the determination concerning your guilt or innocence.
>
> THE DEFENDANT: Absolutely.
>
> THE COURT: Is that what you would like to do?
>
> THE DEFENDANT: Yes.
>
> THE COURT: I am going to ask you then to sign a Jury Waiver.
>
> THE DEFENDANT: Yes, I do understand that."

Although defendant was *pro se* at this time, an assistant public defender in the courtroom offered to assist him in executing the jury waiver form. The assistant public defender asked defendant to read the form before signing it so that he could understand and confer with the court about its contents. Per the assistant public defender's instructions, defendant read the waiver aloud:

"THE DEFENDANT: It says, 'I, the undersigned, do hereby waive jury trial and submit the above-entitled cause to the court for,' uhm, 'hearing.'

[ASSISTANT PUBLIC DEFENDER]: Sign there.

(Pause held.)

* * *

THE COURT: Wait a minute, I am not finished. I watched you sign this Jury Waiver in open court. By signing this Jury Waiver did you intend to give up your right to a jury trial?

THE DEFENDANT: I don't like waiving things, but yes. Yes, I would waive. Yes, I would waive.

THE COURT: The court finds that Mr. Ward has knowingly and intelligently waived his right to jury trial and it will be accepted."

On the day of trial, the court addressed the jury waiver again, this time admonishing defendant:

"THE COURT: I want to be clear that you are sure that you have a right to a jury trial. A jury trial is where you or your attorney—you, since you have elected to go pro se—select twelve people to listen to the evidence. You are asking this court, though, to make that decision regarding your guilt or innocence?

THE DEFENDANT: Yes.

[ASSISTANT STATE'S ATTORNEY]: Judge, we did the Jury Waiver on the last court date.

THE COURT: So I just want to make sure that the Jury Waiver he executed is on January 5th of 2016.

[THE] DEFENDANT: Yes.

THE COURT: It's still the one you are going forward with?

[THE] DEFENDANT: Yes, Your Honor."

¶ 8 At trial, Abukalifeh testified that, on January 28, 2013, he was working as a cashier at Yo Yo Food around 11 a.m. He stood behind glass that separated him from the customers. After a woman, later identified as Shalanda Stewart, made a purchase and left the store, defendant, wearing a red hooded shirt, approached and put some items on the counter. Defendant pointed a black gun at Abukalifeh from about two feet away and said, "Give me the money, otherwise I'm gonna shoot you." Abukalifeh, believing that the gun was real, gave defendant about $150 in cash, which defendant took and left the store. When asked, on cross-examination, how he could identify defendant three years after the robbery, Abukalifeh responded, "There are some things in the life of [a] human being that you cannot forget. Tough things."

¶ 9 Stewart testified that as she was walking home from the store, defendant approached her, asked for her "number," and followed her into her nearby apartment building. She saw defendant walking upstairs as she entered her first-floor apartment.

¶ 10 Chicago police officer Gregory Butts testified that he and Officer Phillips talked to Stewart and another resident of her building, Carla Campbell, who gave them written consent to search her second-floor apartment. In Campbell's apartment, the police found a red hoody and a BB gun made of hard plastic, which "looked real," such that Butts did not realize that it was a toy until he picked it up. The officers attempted to enter another, vacant apartment on the second floor, but the door was barricaded. The fire department came to breach the door, but defendant

exited the apartment when firefighters arrived. Inside, Butts found an "unknown amount" of cash in the closet.

¶ 11 Chicago police detective Michael D'Andrea testified that he interviewed defendant at the police station. After receiving the *Miranda* warnings, defendant told D'Andrea that he went into Yo Yo Food, pointed a BB gun at the cashier, and demanded money because he was desperate for money. Defendant stated that he walked to his cousin's second-floor apartment, took off his sweatshirt with the gun in the pocket, and put it in the corner behind the door. He went into an adjacent apartment and barricaded the door.

¶ 12 The court found defendant guilty of armed robbery and not guilty of aggravated unlawful restraint. Defendant filed a *pro se* motion for new trial and accepted the appointment of a public defender, who filed a supplemental motion to reconsider or, alternatively, for new trial. At a hearing on the motion, the court vacated the finding of guilt on the armed robbery charge and instead found defendant guilty of the lesser-included offense of robbery.

¶ 13 At sentencing, the State presented certified copies of defendant's 1994 attempted murder conviction, for which he received a 10-year sentence, and his 1999 armed robbery conviction, for which he received a 7-year sentence. The State argued that, based on his criminal history and the facts of the case, defendant was eligible for a Class X sentence and should serve "a significant amount of time" for the current offense.

¶ 14 In mitigation, defense counsel mentioned that defendant had been in custody for approximately three years, during which time he attended education courses. Defense counsel also stated that defendant looked forward to continuing his education, reuniting with his child

and mother, and becoming a productive member of society. The defense requested that the court impose sentence of 10 years' imprisonment.

¶ 15 Defendant's presentence investigation report stated that he had obtained a GED, maintained relationships with his mother and two siblings, and had no children. The report also noted that defendant received three years' probation in 2009 for possession of a controlled substance and two days' jail time in 2012 for resisting a peace officer. According to the Chicago Police Department, he was affiliated with the Gangster Disciples street gang, but defendant denied this.

¶ 16 After reviewing the trial evidence, the court noted that defendant's criminal history was aggravating and stated that, "In mitigation, the fact that he had started taking classes in Cook County Jail while awaiting trial on this case is something that should be considered." The court sentenced defendant to 28 years' imprisonment and assessed $412 in fines and fees. Defendant was credited for 1285 days spent in presentence custody. At a subsequent hearing, defense counsel told the court that it appeared as though defendant had timely filed a notice of appeal by mail on Septmeber 1, 2016, and that defendant mailed a motion to reconsider sentence that the Clerk's office received on September 6, 2016.[1] The court found that the filing of defendant's *pro se* notice of appeal deprived the court of jurisdiction to hear the motion to reconsider sentence. However, the court also stated that if it were to entertain the motion, it would be denied. Defense counsel filed a supplemental notice of appeal.

¶ 17 Defendant first challenges the validity of his jury waiver. Specifically, he argues that his waiver was not knowing and voluntary because the trial court failed to ascertain whether his

[1] Neither motion appears in the record.

waiver was the product of threats or promises, and whether he understood (1) how a jury is selected, (2) that he had the right to present evidence and cross-examine the State's witness in a jury trial, (3) that a jury could only convict him by unanimous decision, and (4) that the State bears the burden of proof in both a jury trial and a bench trial. The State maintains that defendant's jury waiver was valid because he demanded a bench trial multiple times during the course of proceedings and submitted a signed, written jury waiver in open court.

¶ 18 Defendant did not challenge the validity of his jury waiver in the trial court. His claim of error is therefore forfeited. *People v. Bannister*, 232 Ill. 2d 52, 64-65 (2008). However, defendant argues that we may review this issue under the plain error doctrine. Pursuant to the plain error doctrine, we may review an unpreserved error when a "clear and obvious error occurs," and either (1) the evidence is closely balanced, or (2) the error is serious enough to undermine the fairness of the defendant's trial and the integrity of the judicial process. *Id.* at 65.

¶ 19 Although the plain error doctrine is a narrow exception to the general forfeiture rule, we agree with defendant that we may consider whether his fundamental right to a jury trial has been violated under the doctrine's second prong. *People v. Bracey*, 213 Ill. 2d 265, 270 (2004) ("Whether a defendant's fundamental right to a jury trial has been violated is a matter that may be considered under the plain error rule."). In a plain error analysis, defendant must first show that an error occurred. *Bannister*, 232 Ill. 2d at 65.

¶ 20 Our federal and state constitutions guarantee the fundamental right to a jury trial. U.S. Const., amends. VI, XVI; Ill. Const. 1970, art. I, §§ 8, 13. A defendant may waive his right to a jury, but such a waiver is valid only if it was knowing and voluntary. 725 ILCS 5/115-1 (West 2012); *People v. Tooles*, 177 Ill. 2d 462, 468 (1997). The validity of a waiver depends on the

facts and circumstances of the specific case; there is no precise formula to determine if a waiver was knowing and voluntary. *Bannister*, 232 Ill. 2d at 66. The trial court must ensure that defendant possesses the "pivotal knowledge" that the facts of the case will be determined by a judge and not a jury. *Id.* at 69. "Defendant bears the burden of establishing that his jury waiver was invalid." *People v. Reed*, 2016 IL App (1st) 140498, ¶ 7. We review the validity of the jury waiver *de novo*. *Bannister*, 232 Ill. 2d at 66.

¶ 21 Here, the evidence shows that defendant waived his right to a jury trial knowingly and voluntarily. Through the course of the pretrial proceedings, defendant alternated between demands for a jury trial and a bench trial six times, which suggests that he understood there was a difference between the two. For much of this period, defendant was represented by counsel and had the opportunity to confer with his attorney on the ramifications of having a bench trial or jury trial. Defendant's familiarity with the legal system, as evidenced by his criminal history, also suggests that he understood the basic consequences of waiving his right to a jury. See *Reed*, 2016 IL (1st) 140498, ¶ 7 (reviewing courts may consider a defendant's prior interactions with the legal system to determine if a jury waiver was valid). Indeed, despite lacking formal legal training, defendant claimed to be "well-versed" in the "procedures of the law," and purported to visit the jail's law library on numerous occasions while assisting in his own defense. Additionally, when asked if he wish to forgo his right to a jury, defendant stated that "I don't like waiving things, but yes. Yes, I would waive." This response suggests that defendant understood that he was giving up a significant right and did not take the decision lightly.

¶ 22 Moreover, the court explicitly admonished defendant on the crucial difference between a bench trial and jury trial by explaining that a jury would comprise 12 people who would "listen

to the evidence and decide whether you are guilty," whereas a bench trial meant that defendant would be "asking this court to make the determination concerning your guilt or innocence." The trial court also twice made clear that defendant, along with the State's Attorney, was entitled to select the jurors. On the date of trial, the court again informed defendant that he had the "right" to have "twelve people to listen to the evidence" and reach a verdict, as distinguished from a bench trial where he would be "asking this court, though, to make that decision regarding your guilt or innocence[.]" On each occasion, defendant acknowledged that he understood the admonishments and stated that he still wished to waive his right to a jury.

¶ 23 While not dispositive, the fact that defendant signed a written waiver form is additional evidence that he knowingly waived his right to a jury. *People v. Gatlin*, 2017 IL App (1st) 143644, ¶ 14. Although defendant was *pro se* when he signed the waiver form, an assistant public defender in the courtroom assisted him. The assistant public defender's intervention highlighted the significance of the form, which, at his direction, defendant read aloud in open court. The form stated that, by signing it, defendant waived a jury trial, and instead submitted the case "to the court." The assistant public defender urged defendant to discuss the matter with the judge. Later in the same hearing, the court asked defendant whether he intended "to give up your right to a jury trial" by signing the jury waiver form, and defendant responded affirmatively. On the day of trial, the court asked defendant if he still wished to waive his right to a jury, and defendant confirmed that he did. Thus, the circumstances around the execution of the waiver form show that the substance and significance of a jury waiver were conveyed to defendant, who acknowledged both orally and in writing that he understood.

¶ 24 Although, on appeal, defendant lists several factors that the trial court did not specifically mention, this does not undermine the validity of defendant's waiver. See *Bannister*, 232 Ill. 2d at 66 (noting that a trial court need not give any specific admonishment to make a jury waiver effective); *People v. West*, 2017 IL App (1st) 143632, ¶¶ 9, 12 (finding a jury waiver valid even where, *inter alia*, the trial court did not ask whether the jury waiver was a product of threats or promises, and did not tell the defendant that he had the right to cross-examine witnesses or present his own evidence, that a jury's decision of guilt must be unanimous, or that the State had the burden of proof in both types of trials). We find that, considering the court's admonishments, defendant's verbal and written assent, and defendant's exposure to the criminal justice system, defendant validly waived his right to a jury trial. Because there was no error here, plain or otherwise, defendant's challenge to the validity of his jury waiver is without merit.

¶ 25 Defendant next argues that his 28-year sentence for robbery was excessive. Specifically, he contends that the sentence is disproportionate to the seriousness of the offense and that he is a good candidate for rehabilitation because he has a GED and furthered his education while in custody awaiting trial. In response, the State maintains that the seriousness of defendant's crime and his criminal history warrant a sentence near the statutory maximum.

¶ 26 Defendant did not file a motion to reconsider sentence in the trial court, and has therefore forfeited the issue on appeal. See *People v. Hillier*, 237 Ill. 2d 539, 544 ("It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required."). However, defendant argues that we may still review his sentence under either prong of plain-error analysis. As previously stated, the plain error doctrine is a "narrow exception" to the general forfeiture rule. *People v. Lewis*, 234 Ill. 2d

32, 42 (2009). Under either prong of the doctrine, defendant bears the burden of showing that a plain error occurred. *Id.* at 43. For the reasons that follow, we find that the trial court did not error in imposing sentence.

¶ 27 The Illinois Constitution requires that a trial court impose a sentence in keeping with the seriousness of the offense and the goal of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11. In balancing these constitutional objectives, a trial court must consider a number of aggravating and mitigating factors, and it is in a better position than a reviewing court to weigh the factors appropriately. *People v. Brown*, 2015 IL App (1st) 130048, ¶ 41. As such, a trial court's sentencing decisions are entitled to great deference, and a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). A sentence cannot be reduced on appeal unless the trial court abused its discretion. *Id.* at 212. When a sentence falls within the statutory range, an abuse of discretion occurs only where the sentence is "greatly at variance with the spirit and purpose of the law" or is "manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 28 Here, we find that the trial court did not abuse its discretion in imposing sentence. Based on his criminal history, defendant was subject to a mandatory Class X sentence of 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2012). The 28-year sentence fell within the applicable statutory range, and is therefore presumed proper. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 27.

¶ 29 Furthermore, we cannot say that defendant's sentence was manifestly disproportionate to the seriousness of the offense, which is the most important factor for the court to consider.

People v. Decatur, 2015 IL App (1st) 130231, ¶ 12. The evidence established that defendant stood approximately two feet from Abukalifeh at the store counter, albeit with glass between them, pointed an object resembling a gun at him, and threatened to shoot him unless he gave him money. Abukalifeh testified that he gave defendant $150 out of the cash register because he through the gun was real. Butts similarly testified that the gun "looked real," and that he did not realize that it was a BB gun until he held it. Defendant acknowledges that robbery is a "serious" offense, but contends that his sentence was excessive because the events "occurred very quickly," and because Abukalifeh did not testify that he suffered any ill effects from the incident. However, the record shows that the robbery did have a lasting impact on Abukalifeh, as he stated that he remembered defendant's face after three years because, "There are some things in the life of [a] human being that you cannot forget. Tough things." See *People v. Lurks*, 241 Ill. App. 3d 819, 828 (1993) (treating psychological harm to the victim as an aggravating factor at sentencing).

¶ 30 Additionally, the trial court was free to consider in aggravation defendant's two prior Class X felonies for attempted murder in 1994, for which he received a 10-year sentence, and armed robbery in 1999, for which he received a 7-year sentence. While defendant argues that his prior convictions do not warrant a near-maximum sentence because more than 13 years had elapsed since his last felony conviction, it was the trier of fact's role to decide how much weight should be given to defendant's criminal history. Defendant essentially asks us to substitute our own judgment for that of the trier of fact, which we cannot do. *Alexander*, 239 Ill. 2d at 213. Similarly, the mitigating factors present here do not render defendant's sentence excessive. Although defendant argues that he is a "good candidate for rehabilitation" because he has his

GED and took classes while in jail awaiting trial, the court was not required to assign more weight to mitigating factors than to the seriousness of the offense. *Decatur*, 2015 IL App (1st), ¶ 12 (noting that the seriousness of the offense is more important than mitigating factors). Given the relatively modest mitigating factors raised at sentencing, the severity of the instant offense, and defendant's criminal history, we find that the trial court did not abuse its discretion in imposing a 28-year sentence for robbery. Therefore, defendant's sentence did not constitute an abuse of discretion. Because the trial court did not err in sentencing defendant, we find no plain error and, therefore, his sentence is affirmed.

¶ 31 Defendant next argues, and the State agrees, that the mittimus must be corrected to reflect that he was convicted of robbery, rather than armed robbery. Defendant was initially found guilty of armed robbery (720 ILCS 5/18-2(a)(1) (West 2012)), but the trial court vacated that finding, and instead found defendant guilty of simple robbery under section 18-1(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/18-1(a) (West 2012)). However, the mittimus states that defendant was convicted of "ARMED ROBBERY/NO FIREARM" in violation of "720-5/18-2 (A) (1)." We agree with the parties, and accordingly order that defendant's mittimus be corrected to accurately reflect the conviction in this case, that is, robbery under section 18-1(a) of the Code (720 ILCS 5/18-1(a). (West 2012)). See *People v. Polk*, 2014 IL App (1st) 122017, ¶ 33 (indicating that a reviewing court may correct the mittimus at any time without remanding to the trial court).

¶ 32 Finally, defendant challenges several aspects of his fines and fees order. First, he contends that the $5 "Electronic Citation Fee" and the $50 "Court System" charge should be vacated. Second, he argues that the $15 "State Police Operations Fee"; the $190 "Felony

Complaint Filed, (Clerk)" charge; the $25 "Document Storage (Clerk)" charge; the $2 "Public Defender Records Automation Fee"; and the $2 "State's Attorney Records Automation Fee," although designated as fees, are actually fines that should be offset by his presentence incarceration credit. The State agrees that the $5 Electronic Citation Fee should be vacated. The State also maintains that the $50 Court System charge and the $15 State Police Operations Fee are fines that should be offset by the presentence incarceration credit, but that the rest of the charges mentioned above are properly designated as fees.

¶ 33 Defendant did not challenge his fines and fees order in the trial court, and has therefore forfeited the issue. *Lewis*, 234 Ill. 2d 32, 40 (2009). The State notes the forfeiture, but concedes that we may nevertheless review the fines and fees. Because the State does not argue that we cannot review the fines and fees, it has forfeited any forfeiture argument, and we will address defendant's claims on the merits. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 25.

¶ 34 We review the propriety of fines and fees *de novo*. *Id.* A defendant who is convicted and fined after being incarcerated on a bailable offense is entitled to a $5-per-day credit toward the fines levied against him for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2012). The presentence incarceration credit, however, applies only to fines and not fees. *Id.*; *People v. Jones*, 223 Ill. 2d 569, 599 (2006). In this case, defendant spent 1285 days in presentence incarceration, and is therefore entitled to a credit of up to $6425.

¶ 35 Defendant contends, and the State concedes, that the $5 Electronic Citation Fee (705 ILCS 105/27.3e (West 2012)) should be vacated. We agree and accordingly vacate the $5 Electronic Citation Fee, as this charge does not apply to felonies. 705 ILCS 105/27.3e (West 2012); *People v. Smith*, 2018 IL App (1st) 151402, ¶ 12.

¶ 36 Defendant next maintains that the $50 Court System charge (55 ILCS 5/5-1101(c) (West 2012)) should be vacated because it only applies to "violations of the Illinois Vehicle Code." However, defendant relies upon the wrong statutory section in making this argument. Section 5-1101(a) of the Counties Code (55 ILCS 5/5-1101(a) (West 2012)) authorizes a $5 fee for violations of the Illinois Vehicle Code, but in this case, defendant was assessed $50 under section 1101(c)(1), which applies when a defendant is found guilty "for a felony." Defendant was convicted of a felony, and thus the charge was properly imposed here. Although not argued by defendant, we agree with the State that the Court System "fee" is actually a fine because it does not compensate the State for expenses incurred in prosecuting defendant. See *People v. Ackerman*, 2014 IL App (3d) 102585, ¶ 30 (stating that the Court System fee is actually a fine). Similarly, we concur with the parties that the $15 State Police Operations Fee (705 ILCS 105/27.3a-1.5 (West 2012)) is also a fine. See *People v. Milsap*, 2012 IL App (4th) 110668, ¶ 31 (finding that the State Police Operations charge "does not reimburse the State for costs incurred in defendant's prosecution") Accordingly, we find that both the $50 Court System fee and the $15 State Police Operations Fee are offset by defendant's presentence incarceration credit.

¶ 37 Defendant also argues that the $190 "Felony Complaint Filed, (Clerk)" charge (705 ILCS 105/27.2a(w)(1)(A) (West 2012)); the $25 "Document Storage (Clerk)" charge (705 ILCS 105/27.3c (West 2012)); the $2 "Public Defender Records Automation Fee" (55 ILCS 5/3-4012 (West 2012)); and the $2 "State's Attorney Records Automation Fee" (55 ILCS 5/4-2002.1(a) (West 2012)), although designated as fees, are also actually fines that should be offset by his presentence incarceration credit. However, our supreme court recently ruled that these

assessments are properly designated as fees. *People v. Clark*, 2018 IL 122495, ¶ 51. They are therefore not offset by defendant's presentence incarceration credit. *Id.*

¶ 38 For the foregoing reasons, we affirm defendant's conviction and sentence. We order the clerk of the circuit court to correct the mittimus to reflect that defendant was convicted only of robbery under section 18-1(a) of the Code (720 ILCS 5/18-1(a) (West 2012)), vacate the $5 Electronic Citation Fee, and apply defendant's presentence incarceration credit to the $50 Court System fee and the $15 State Police Operations Fee.

¶ 39 Affirmed in part and vacated in part; mittimus and fines and fees order corrected.