2019 IL App (1st) 163047-U

SIXTH DIVISION
March 29, 2019

No. 1-16-3047



IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>NAVARRO PHILLIPS,<br><br>Defendant-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of Cook County.<br><br><br><br>No. 13 CR 14761<br><br><br>Honorable Earl B. Hoffenberg, Judge Presiding. |

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

**ORDER**

¶ 1 ***Held:*** The circuit court did not improperly rely upon defendant's claim of innocence at sentencing. Defendant's merged and unsentenced convictions should not be vacated. We modify the fines and fees order to reflect the removal of the $20 probable cause hearing fee, and a $65 presentence custody credit against the $50 court system fee and the $15 state police operations fee. Affirmed as modified.

¶ 2 Following a bench trial, defendant Navarro Phillips was found guilty of aggravated battery and aggravated discharge of a firearm, and he was sentenced to 14 years' imprisonment. On appeal, defendant contends that (1) he is entitled to a new sentencing hearing, (2) two of his

merged but unsentenced convictions should be vacated pursuant to *People v. Aguilar*, 2013 IL 1121162, and (3) his "fines and fees order" should be corrected. We affirm as modified.

¶ 3 BACKGROUND

¶ 4 Defendant does not challenge the sufficiency of the evidence, so we will limit our discussion of the facts to those necessary to resolve the issues on appeal. Defendant was charged by indictment with, *inter alia*, attempted murder (counts I through IX), aggravated battery with a firearm (count XI), aggravated discharge of a firearm (counts XII through XV), and aggravated unlawful use of a weapon (AUUW) (counts XVIII through XXV). Defendant waived his right to a jury trial, and the case proceeded to a bench trial.

¶ 5 The evidence adduced at trial indicated that, at around 7 p.m. on July 14, 2013, Travis Walker and Leslie Lenoir were with some friends in the back of a townhouse complex at 5041 North Kenmore Avenue in Chicago. Walker was pacing between the back of the townhouse and the adjoining alley while listening to music on his phone. At some point, Walker noticed two men—one of whom he identified in court as defendant—enter the north end of the alley and walk south toward him. Walker described defendant as wearing an orange shirt and white pants. Although Walker could not recall precisely what the other individual was wearing, he testified that the individual was not also wearing an orange shirt.

¶ 6 At some point, Walker heard someone say, "Trav, gun," so he began to run. He then looked over his right shoulder and saw defendant pointing a gun at him. Walker said there was nothing obstructing his view. Walker estimated that defendant was standing between 15 to 20 feet away. As he ran, Walker slipped and fell on some gravel that was between two parked cars. Walker heard two gunshots. Walker got up, retrieved his phone that had slid out of his hand, and ran back into the house through the back yard, about twenty steps away. As he fled, Walker heard approximately "four [or] five" additional shots.

¶ 7 When Walker got back into the townhouse, he no longer heard any additional gunshots, so after about "five, eight seconds," he went back outside. He saw defendant running north down the alley, and after about 15 or 20 seconds, the police arrived.

¶ 8 Walker stated that, when he walked out of the townhouse, his cousin told him that there was blood on his socks. At that point, he noticed that he had been shot. Walker was taken to an ambulance, and while he was in the ambulance being treated, a police officer brought someone for him to identify. Walker confirmed that this took place within an hour of the shooting and "maybe" 10 or 15 minutes. Walker testified that the individual was the shooter, and he identified defendant in court as the shooter. Walker noted, however, that defendant was no longer wearing an orange shirt. After being treated at the hospital and released, Walker subsequently identified defendant in a lineup as the shooter. Walker then conceded that he had two prior convictions for possession of cannabis, a 2011 conviction for domestic battery, and "some convictions *** from the early 2000s and late '90s," that were "mostly for drugs."

¶ 9 Lenoir testified that, shortly before the shooting, he saw an individual who had been walking down the alley from the north pull a gun out of his waist. The individual was about 15 to 20 feet away from him. Lenoir immediately took cover behind his truck and heard five or six shots. When the shooting subsided, Lenoir went north to another parked vehicle in an attempt to flee the area. Lenoir saw the same individual, wearing an orange shirt and white pants, running northbound away from the scene down the alley. Lenoir said the police arrived on the scene soon thereafter, and he told them where the shooter was running and what he was wearing. A police officer looked to the north of the alley, and pointing at the individual wearing the same orange shirt and white pants, asked Lenoir if that was the shooter. Lenoir confirmed to the officer that it was, and Lenoir added that there was an unobstructed view down the alley for

several blocks. Lenoir saw the shooter run near a set of dumpsters and make some sort of "motion" and then continue running down the alley. The officer that Lenoir had been speaking to left, and when Lenoir walked to the area of the dumpsters, other officers in that area told Lenoir to leave. Lenoir then returned to the alley behind the townhouse.

¶ 10 Police officers then arrived and took Lenoir "up front" because they had a suspect in custody. Lenoir went with the officers and saw the shooter, but Lenoir noted that the shooter was no longer wearing an orange shirt. Lenoir confirmed that Walker was not near him when Lenoir made the identification. Lenoir was then taken to the police station to speak to detectives.

¶ 11 The parties then stipulated that Chicago police officer Unizycki retrieved a security video from 5200 North Kenmore that showed a view of the dumpsters in the alley. The circuit court commented that the video showed "something dropped into the last dumpster," and police officers later looking at something in the dumpster.

¶ 12 Chicago police officers Michael Ly testified that he and his partner, officer Patrick Keane, were patrolling in the area at the time of the shooting and arrived at the location in about 30-40 seconds. Upon arrival, he spoke to Lenoir. Lenoir explained what had happened, provided a description of the shooter, and indicated the shooter fled north through the alley. Ly looked in that direction, and when Lenoir confirmed that the individual Ly had pointed out to him was shooter, Ly began walking northbound toward the shooter. Ly saw the shooter lift the lid of a green dumpster throw an item in, run a few feet north, remove his orange shirt and throw it on another dumpster. Ly said the shooter "veered right," and Ly lost sight of him.

¶ 13 At that point, Keane pulled up in his patrol car, Ly got in, and they went east on Winona before traveling north on Sheridan Road. Ly saw the shooter walking, not wearing a shirt, but wearing the same white pants. Ly did not recall any other individuals on that street wearing

white pants. Ly identified the shooter in court as defendant. Ly said that, once he made eye contact with defendant, defendant fled to the south into a parking lot. Keane pulled into the parking lot, and Ly then chased defendant on foot. Ly testified that he never lost sight of defendant. Ly said that defendant was subsequently arrested in the area of Kenmore and West Berwyn Avenue. Defendant was then transported by another officer back to the scene.

¶ 14 Chicago police officer Djonlich testified that, at the time of the shooting, he and his partner, officer Chin, were at the intersection of West Foster Avenue and Sheridan facing west. They heard the report of shots fired at a residence and received Ly's message describing the shooter as a black male wearing an orange shirt and white pants fleeing north from the scene. They saw an individual matching that description heading north on Sheridan. Djonlich identified defendant in court as the individual matching the description. Djonlich stated that defendant began to turn "slightly" to the right, but when defendant saw Djonlich, defendant went left, westbound, down Foster. Defendant then went north down the alley, and Djonlich lost sight of him. Djonlich drove west on Foster until he got to the alley. He looked to the north and saw defendant "doing something with his shirt." Djonlich then lost sight of defendant a second time.

¶ 15 Djonlich heard various messages regarding defendant's direction of flight, and he eventually was able to block defendant's path to the north. Djonlich saw defendant turn to the south, but was stopped by Ly. Djonlich helped Ly handcuff defendant. Djonlich said defendant was transported back to the scene, and when Djonlich went to his partner's location near the dumpster where Djonlich said defendant had been doing something with his shirt, Djonlich saw defendant's orange shirt.

¶ 16 Chicago police officer John Simioni testified that, shortly after the time of the shooting, he and his partner were called to provide transport for a suspect that was in custody in the area of

5311 North Kenmore Avenue. Simioni identified defendant in court as the person in custody. The officers took defendant to an ambulance in front of the townhouse, and Walker identified defendant as the shooter. Simioni then took defendant back to Simioni's car where Lenoir also identified defendant as the shooter. Simioni stated on cross-examination, however, that defendant was "definitely" wearing a shirt at the time of the identification and that Simioini did not have to "bring [defendant] far at all" to Lenoir for identification.

¶ 17 The parties stipulated that a gun was found in the dumpster that Ly had seen defendant put something into, and that a "peach colored" shirt was on top of a nearby dumpster. In addition, the parties stipulated that a gunshot residue test administered on defendant did not indicate the presence of any residue and that there were no "ridge impressions" for comparison with defendant's fingerprints. Finally, the parties stipulated that defendant had 2008 convictions for aggravated battery and unlawful restraint. The State rested, and defendant elected not to present any evidence. The parties then presented their closing arguments.

¶ 18 Following closing arguments, the circuit court found defendant guilty of aggravated battery with a firearm (count XI), aggravated discharge of a firearm (counts XII and XIV), and AUUW (counts XX, XXI, XIV, and XXV); and not guilty on the remaining charges. The court stated that it had "not one scintilla of belief that [defendant] wasn't the shooter," and it found Walker's and Lenoir's testimony "really credible." The judge noted that there was "so much evidence in this case, really one of the best direct and circumstantial cases I've ever seen in my 40 some odd years of practicing." The judge reiterated, "I think there is not a doubt in my mind, not even a little doubt in my mind, that he committed the shooting of this offense." The matter was continued for sentencing and the preparation of a presentence investigation report (PSI).

¶ 19 On June 2, 2016, the circuit court held defendant's sentencing hearing. After discussing various corrections to the PSI and the police "rap sheet," the State argued in aggravation that a "very significant" sentence was warranted "to send a message" to defendant. In mitigation, defense counsel argued that defendant only merited an eight-year sentence based upon defendant's learning disability, his childhood with an abusive stepfather, and the fact that there were no substantial injuries. When the court noted that defendant "had the chance to take" an eight-year sentence, defense counsel responded, "[J]ust because [defendant] didn't take it doesn't necessarily mean that he can't get it now." The court replied, "I just said that. I know."

¶ 20 At the end of defense counsel's arguments in mitigation, the following exchange took place regarding a letter defendant had sent to the circuit court:

> "[THE COURT:] The first thing in the letter, he said, I'm innocent. With all due respect, that really rubs me, to be honest with you, [defense counsel]. He's not innocent, and you know, to send me a letter asking me to give him 8 years is what he did. Based upon the fact that he's innocent, it didn't really sit very good with me, to be honest with you.
>
> There's no question, I gave him a break as far as I'm concerned with the finding of not guilty on the attempt murders. I've given a huge break because I just felt that the Court – I felt that there wasn't enough evidence. But I guess maybe I'm, you know, a little bit taken back with the fact that as we stand here today in mitigation, the mitigating facts and then getting a letter,

> and basically saying what he did about you was also my concern,
>
> to be honest with you."

Defense counsel then interjected and said that he "certainly underst[ood]" why the letter would "rub you that way." Counsel stated that he did not know why defendant would think it a "good idea" to send a letter both proclaiming his innocence and asking for an eight-year prison term. Counsel asked the court to "disregard the letter that [defendant] sent you and listen to him today" and to counsel's arguments in mitigation. The court responded, "No, that's fine, because I'll give him a chance."

¶ 21 Defendant elected to make a statement in allocution, apologizing "for the train of events that happened on that day." Defendant stated that his grandmother has been supportive of him, he has a "CDL job" waiting for him upon release, and he was "ready to be productive ***."

¶ 22 Following defendant's statement in allocution, the circuit court noted that the facts in the case were "terrible" and defendant's background was 'horrendous." The court stated that it was "just not happy with what happened in this case at all," characterizing it as a "terrible situation," and that the court gave defendant "the benefit of the doubt on attempt murder cases," which would have resulted in a greater sentencing range.

¶ 23 The court then sentenced defendant to concurrent terms of 14 years' imprisonment on the convictions for aggravated battery with a firearm (count XI) and aggravated discharge of a firearm (counts XII and XIV). The court did not sentence defendant on the remaining convictions for AUUW (counts XX, XXI, XIV, and XXV); instead, the court merged those convictions into the convictions on counts XI, XII, and XIV. In addition, the court imposed $569 in fees and fees, and it noted that defendant was entitled to 1,054 days of presentence custody credit. The fines and fees included the following: $20 "Probable Cause Hearing"; $50

"Court System"; $15 "State Police Operations Fee"; $190 "Felony Complaint Filed (Clerk)"; $25 "Automation (Clerk)"; $2 "Public Defender Records Automation Fee"; $2 "State's Attorney Records Automation Fee"; and $25 "Document Storage (Clerk)".

¶ 24 This appeal followed.

¶ 25 ANALYSIS

¶ 26 Defendant first challenges his sentence. In particular, defendant argues that the circuit court erroneously considered his claim of innocence in a letter sent to the court as an aggravating factor. Defendant asks that we remand for a new sentencing hearing. In response, the State argues defendant has forfeited this claim. Defendant acknowledges that this claim was not raised in a post-trial motion and is therefore forfeited. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Consequently, defendant seeks review under the plain error doctrine.

¶ 27 The plain error rule bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when either: (1) the evidence is close, regardless of the seriousness of the error; or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 185-87 (2005). Defendant argues that the second prong of the plain error doctrine applies. Under the second prong of the plain error doctrine, a defendant must show that the error was so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. *Id.* However, we must first determine whether any error occurred, for if there is no error, there is no plain error. *Id.*

¶ 28 Defendant's claim centers on the sentence imposed by the circuit court. In imposing a sentence, the circuit court must balance relevant factors, such as the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). The court has a superior opportunity to evaluate and weigh a defendant's

credibility, demeanor, character, mental capacity, social environment, and habits. *Id.* In addition, a court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors on the record. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). Since the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, and the presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence. *Alexander*, 239 Ill. 2d at 214.

¶ 29 Defendant's 14-year sentences were within statutory limits. See 720 ILCS 5/12-3.05(h) (West 2012) (aggravated battery under subsection (e)(1) is a Class X felony); 720 ILCS 5/24-1.2(b) aggravated discharge of a firearm under subsection (a)(2) is a Class 1 felony); 730 ILCS 5/5-4.5-25(a) (West 2012) (sentence range for class X felonies is not less than 6 years and not more than 30 years); 730 ILCS 5/5-4.5-30(a) (West 2012) (sentence range for class 1 felonies is not less than 4 years and not more than 15 years). We review sentences within statutory limits for an abuse of discretion, and we may only alter such a sentence when it varies greatly from the spirit and purpose of the law, or if it is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212. So long as the court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *Perkins*, 408 Ill. App. 3d at 762-63. This broad latitude means that we cannot substitute our judgment simply because we might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 30 Defendant argues that the circuit court erroneously considered his protestation of innocence as an aggravating factor. We disagree. "A trial court should not automatically and

arbitrarily consider a defendant's insistence on his or her innocence as an aggravating factor when sentencing him." *Perkins,* 408 Ill. App. 3d at 763 (citing *People v. Ward,* 113 Ill. 2d 516, 529 (1986)). Under certain circumstances, however, a defendant's "continued insistence and concomitant lack of remorse 'may convey a strong message to the trial judge that the defendant is an unmitigated liar and at continued war with society.' " *Id.* (quoting *Ward*, 113 Ill. 2d at 528). These circumstances can include "the unshaken credibility of the victim." *Id.* In that instance, the court can consider a defendant's lack of remorse or denial of guilt as it affects his prospects for rehabilitation. *Id.*

¶ 31 Here, the circuit court did not automatically and arbitrarily consider defendant's claim of innocence as an aggravating factor. At the close of evidence, the court noted the substantial amount of evidence supporting defendant's guilt—an amount the court said it had not seen in its over 40 years of practice. Due to the weight of the evidence, the court understandably rejected defendant's claim of innocence in his letter. Moreover, defense counsel interrupted the court to state that he understood the court's response to defendant's letter, implicitly agreed that sending that letter was not a good idea, and explicitly asked the court to disregard the letter. The court agreed to that request and added that it would give defendant "a chance." These statements did not indicate that the court intended to impose a more severe sentence solely due to defendant's proclamation of innocence. Instead, the court's statements merely rejected defendant's claim and indicated that it would not consider defendant's letter in determining the sentence.

¶ 32 Moreover, defendant's claim of innocence was hollow: his conviction was supported by the identification of him as the shooter by two eyewitnesses—both of whom were within 15 to 20 feet of defendant—who saw the shooting unfold in broad daylight while other neighborhood residents were outside. In addition, police witnesses confirmed that defendant was the individual

Lenoir and Walker both identified as the shooter. The circuit court also noted that a video recording of the area of the dumpsters showed defendant throwing an object in a dumpster that was later found to contain the weapon used in the shooting. The court emphasized the strength of the evidence when it stated it had not even a "scintilla" of doubt that defendant was the offender. In light of the "unshaken credibility" of not only the victim and also another witness, the court could quite properly conclude that defendant's "continued insistence and concomitant lack of remorse" rendered him " 'an unmitigated liar and at continued war with society.' " *Perkins*, 408 Ill. App. 3d at 763 (quoting *Ward*, 113 Ill. 2d at 528). As such, the court did not abuse its discretion in considering defendant's specious assertion of innocence. See *id.* Defendant's argument on this point is thus without merit.

¶ 33 Moreover, defendant's citation to *People v. Byrd*, 139 Ill. App. 3d 859 (1986), and *People v. Speed*, 129 Ill. App. 3d 348 (1984), does not alter our holding. In *Byrd*, the court held that "[a] more severe sentence may not be imposed because a defendant refuses to abandon his claim of innocence, ***." *Byrd*, 139 Ill. App. 3d at 866. This is contrary to our supreme court's subsequent holding in *Ward* that, under certain circumstances, a trial court *may* consider a defendant's claim of innocence. See *Ward*, 113 Ill. 2d at 528-30.

¶ 34 In *Speed*, the cause was on remand for resentencing, and at the resentencing hearing, the defendant admitted committing "some crime" but not the one he had been convicted of (and which had been affirmed on a prior appeal). *Speed*, 129 Ill. App. 3d at 349-50. The trial court stated that it had considered resentencing the defendant to ten years, but then noted that "[w]hen Mr. Speed said he didn't commit the crime which he stands charged and convicted again tilted the scale the other way." *Id.* at 351. It then sentenced the defendant to an 11-year term of imprisonment. *Id.* Here, the court's observation—that defendant's refusal to accept

responsibility was not credible in light of the evidence presented at trial—did not indicate that the court decided to increase defendant's sentence after defendant's statement. Therefore, defendant's reliance on both *Byrd* and *Speed* is unavailing.

¶ 35 Defendant's argument that the circuit court "overstated [defendant's] background, calling it 'horrendous' " also fails. At the sentencing hearing, the court referred to defendant's PSI, which included prior convictions for aggravated battery in a public place, unlawful restraint, felony possession of a weapon, reckless conduct, as well as various narcotics- and alcohol-related offenses. The court had a superior opportunity to evaluate defendant's credibility, demeanor, and character, and we may not substitute our judgment for that of the circuit court simply because we might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 36 We agree with the circuit court that the circumstances of this offense were egregious: defendant, unprovoked and otherwise with no clear motive, shot multiple times at an innocent individual. Fortunately for the victim, he was wounded "only" once, and his wound was not life-threatening. Defendant's sentences fall within their sentencing ranges, and we cannot say that they vary greatly from the spirit and purpose of the law or are manifestly disproportionate to the nature of the offense. *Id.* at 212. As a result, the court did not abuse its discretion in imposing these 14-year concurrent sentences. *Id.* Moreover, defendant is entitled to good-conduct credit, which would allow him to fully serve his sentences in less than 12 years. See 730 ILCS 5/3-6-3(a)(2)(ii) (minimum 85% of sentence to be served for aggravated battery with a firearm convictions under (e)(1)), (iv) (same minimum for aggravated discharge of a firearm convictions). Since there is no error, there is no plain error, and we must honor defendant's forfeiture of this issue. See *Herron*, 215 Ill. 2d at 187.

¶ 37 Defendant next contends that this court should vacate two of his merged convictions for aggravated unlawful use of a weapon because they are unconstitutional under *People v. Aguilar*, 2013 IL 1121162. This claim, however, that is not properly before this court.

¶ 38 It is well settled that there is no final judgment in a criminal case until the imposition of sentence, and absent a final judgment, "an appeal cannot be entertained." *People v. Caballero*, 102 Ill. 2d 23, 51 (1984). In *People v. Neely*, 2013 IL App (1st) 120043, we refused to consider a defendant's challenge to a nonfinal, unsentenced conviction, where, as here, it was merged at sentencing. The *Neely* court stated that, since no sentence had been imposed on the conviction, "no challenge to his unsentenced conviction *** is properly before us," and it declined to consider the defendant's challenge. *Id.* ¶ 15.

¶ 39 Here, as in *Neely*, no sentence was imposed on defendant's AUUW convictions under counts XX and XXIV. Instead, the circuit court merged those convictions into, and then imposed sentence upon, the convictions for aggravated battery with a firearm (count XI) and aggravated discharge of a firearm (counts XII and XIV)—convictions that have not been reversed. Since there is no challenge to his unsentenced convictions for AUUW properly before us, we may not consider defendant's challenges to his unsentenced AUUW convictions. See *Caballero*, 102 Ill. 2d at 51.

¶ 40 Nonetheless, defendant argues that we may consider unsentenced convictions so long as the case is properly on appeal from a final judgment on another offense. In support, he relies upon *People v. Scott*, 69 Ill. 2d 85 (1977), *People v. Dixon*, 91 Ill. 2d 346 (1982), and *People v. Burrage*, 269 Ill. App. 3d 67 (1994). None of those cases, however, are persuasive. First, *Scott* and *Dixon* both predate the supreme court's holding in *Caballero*. We therefore defer to our supreme court's more recent pronouncements on this issue. Moreover, *Scott* did not involve the

substantive merits of an unsentenced conviction; instead, the only issue before the court was whether, while on appeal seeking reversal for an aggravated kidnapping conviction, the appellate court was "empowered to remand the cause for imposition of sentence." *Scott*, 69 Ill. 2d at 87. Notably, the *Scott* court specifically stated that it was not considering the issue of whether the order appealed from was final and appealable. *Id.* at 89.

¶ 41 In *Dixon*, jurisdiction was upheld so that a nonfinal, unsentenced conviction could be reinstated after a greater conviction was vacated. See *Dixon*, 91 Ill. 2d at 353-54. The holding in *Dixon* was interpreted as directing the appellate court to "entertain jurisdiction where a greater conviction is vacated so that a nonfinal, unsentenced conviction can be reinstated." *Neely*, 2013 IL App (1st) 120043, ¶ 14. Nonetheless, the holding must be narrowly construed to avoid the review of "unappealed and unsentenced convictions when the greater offense has not been reversed and vacated." *People v. Ramos*, 339 Ill. App. 3d 891, 906 (2003).

¶ 42 Finally, we recognize that *Burrage* seems to support defendant's argument that we may consider his unsentenced convictions. In that case, a panel of this court held that a reviewing court could consider an unsentenced conviction if there were a "proper appeal from the final judgment of another offense." *Burrage*, 269 Ill. App. 3d at 72. In other words, according to the *Burrage* court, as long as a sentence has been imposed on any one offense, defendant may challenge each of his nonfinal, unsentenced convictions. Although *Burrage* has not been explicitly overruled, it is inconsistent with the current state of the law, and we therefore decline to follow it.

¶ 43 Absent the reversal or vacation of a greater conviction, it would be improper to consider the merits of convictions for which a sentence has yet to be imposed; that is, convictions that are

nonfinal. Accordingly, we reject defendant's reliance on *Scott*, *Dixon*, and *Burrage*, and we decline to consider his challenges to his nonfinal, unsentenced convictions.

¶ 44 Finally, defendant challenges various fines and fees that were imposed on him. We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 45 Defendant argues, and the State concedes, that a $20 "Probable Cause Hearing" fee was erroneously imposed on him. We agree with the parties. The $20 probable cause hearing fee applies when a preliminary hearing is held to determine the existence of probable cause to believe that the accused has committed an offense. 55 ILCS 5/4-2002.1(a) (West 2012). Here, as defendant and the State point out, that fee should not have been imposed because defendant was charged via indictment and no probable cause hearing was held. See *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 47. We therefore vacate the $20 probable cause hearing fee.

¶ 46 Defendant next argues, and the State again concedes, that the $50 "Court System" fee and the $15 "State Police Operations Fee" should be fully offset by defendant's presentence custody credit. A defendant is entitled to a $5 credit against any fines for each day served in presentence custody. 725 ILCS 5/110-14(a) (West 2012). This credit applies only to fines, not fees, and it may not exceed the amount of the fine. *People v. Clark*, 2018 IL 122495, ¶ 10. Both the $50 court system fee and the $15 state police operations fee are eligible for offset from a defendant's presentence custody credit. See *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 ($50 court system fee); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (state police operations fee). Defendant spent 1,054 days in custody and is entitled to a credit of up to $5,270 toward eligible fines. We therefore correct the mittimus to reflect a full offset of these charges.

¶ 47 Finally, defendant notes in his reply brief that, in *People v. Clark*, 2018 IL 122495 (2018), our supreme court "resolved the status" of the remaining charges that defendant initially challenged in his opening brief: the $190 "Felony Complaint Filed (Clerk)"; the $25 "Automation (Clerk)"; the $2 "Public Defender Records Automation Fee"; the $2 "State's Attorney Records Automation Fee"; and the $25 "Document Storage (Clerk)." In *Clark*, the court held that each of those assessments were compensatory fees not subject to presentence custody credit. *Id.* ¶ 51. We therefore reject defendant's claim as to these specific fees.

¶ 48 CONCLUSION

¶ 49 The circuit court did not improperly rely upon defendant's claim of innocence at sentencing. We reject defendant's appeal challenging certain merged and unsentenced convictions. We modify the fines and fees order to reflect both the removal of the $20 probable cause hearing fee and also a $65 presentence custody credit against the $50 court system fee and the $15 state police operations fee.

¶ 50 Affirmed as modified.