

No. 1-17-0013

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 14798
)	
SHERMAINE MILES,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

- ¶ 1 *Held:* Affirmed in part and vacated in part; mittimus corrected. \$5 Electronic Citation fee was improperly assessed. Certain challenged assessments were fees, not fines, and not subject to offset by pre-sentence incarceration credit. Assessments that could have been waived pursuant to statute are vacated due to defendant's inability to pay. Counsel not ineffective for failing to request waiver of other assessments that trial court lacked authority to waive.
- ¶ 2 Following a bench trial, defendant Shermaine Miles was convicted of aggravated battery of an emergency medical technician. 720 ILCS 5/12-3.05(d)(5)(i) (West 2014). Based on her history significant mental illness, the trial court sentenced her to 30 months' probation under the supervision of the Adult Probation Mental Health Unit. After defendant left a detox facility, against medical advice, during her probationary period, and then failed to report to the probation department, the trial court revoked her probation and sentenced her to 7 years in prison.

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¶ 3 Defendant does not challenge her conviction or sentence on appeal. But she does raise various challenges to the \$539 in monetary assessments imposed by the circuit court. Given the limited scope of the issues under review, we need not detail the underlying facts of defendant's offense and trial. We proceed directly to the propriety of the monetary assessments.

¶ 4 The propriety of a monetary assessment is a matter of statutory interpretation, which we review *de novo*. *People v. Caballero*, 228 Ill. 2d 79, 82 (2008). Erroneous monetary assessments that were not challenged in the trial court may be reviewed as plain error on appeal. *People v. Lewis*, 234 Ill. 2d 32, 48 (2009).

¶ 5 First, defendant contends, and the State concedes, that the \$5 Electronic Citation fee was improperly assessed. The authorizing statute provides that the fee “shall be paid by the defendant in any traffic, misdemeanor, municipal ordinance, or conservation cases upon a judgment of guilty or grant of supervision.” 705 ILCS 105/27.3e (West 2014). It does not apply to felony convictions. *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. Defendant was convicted of a Class 3 felony. See 720 ILCS 5/12-3.05(d)(5)(i), (h) (West 2014). We accept the State's concession and vacate the Electronic Citation fee.

¶ 6 Second, defendant contends that certain assessments, while nominally called fees by the legislature, are in reality fines, and therefore should have been offset by her \$5-per-day credit for pre-sentence incarceration. See 725 ILCS 5/110-14(a) (West 2014). They are: the \$190 “Felony Complaint Filed, (Clerk)” charge (705 ILCS 105/27.2a(w)(1)(A) (West 2014)); the \$15 State Police Operations charge (*id.* § 27.3a(1.5)); the \$25 Document Storage charge (*id.* § 27.3c); the \$2 Public Defender Records Automation charge (55 ILCS 5/3-4012 (West 2014)); and the \$2 State's Attorney Records Automation charge (*id.* § 4-2002.1(c)).

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¶ 7 In *People v. Clark*, 2018 IL 122495, ¶¶ 22, 27, 34, 49, which was decided after the briefs in this case were filed, our supreme court held that the “Felony Complaint Filed, (Clerk)” charge, the Document Storage charge, the Public Defender Records Automation charge, and the State’s Attorney Records Automation charge, are all fees, not fines; hence, they are not subject to offset by the pre-sentence incarceration credit.

¶ 8 *Clark* did not address the status of the \$15 State Police Operations charge. The parties agree that this charge, although labeled a fee in the statute, is actually a fine. But the parties also agree that it should have been waived by the circuit court, since defendant is indigent and unable to pay any monetary assessments. Because we vacate the charge on that basis (*infra* ¶¶ 10, 12-13), we need not decide whether it is a fee or a fine.

¶ 9 Third, defendant contends that the circuit court had statutory authority to waive several of the charges that it assessed and that it should have done so, because defendant is indigent and therefore without means to pay any monetary assessments.

¶ 10 The \$190 Felony Complaint Filed (Clerk) charge (705 ILCS 105/27.2a(w)(1)(A)) may be waived by court order, although the statute does not establish any criteria for a waiver. *Id.* § 27.2a(gg). The same is true of the \$25 Automation (Clerk) charge. *Id.* § 27.3a(3). The \$15 State Police Operations charge, and the \$10 Probation and Court Services Operations charge, may only be assessed when the Automation charge has been assessed. *Id.* §§ 27.3a(1.1), (1.5). Thus, if the Automation charge has been waived, these charges may not be assessed either.

¶ 11 The \$60 Felony Complaint Conviction (State’s Attorney) charge (55 ILCS 5/4-2202.1(a) (West 2014)), the \$20 Probable Cause Hearing (State’s Attorney) charge (*id.*), and the \$10 Arrestee’s Medical Cost Fund charge (730 ILCS 125/17 (West 2014)) “shall be taxed as costs to be collected from the defendant, *if possible*, upon conviction ***.” *Id.*; 55 ILCS 5/4-2202.1(a)

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(emphases added). Defendant argues that it was not “possible” to collect these costs from her, because she has no means to pay them, and thus they should not have been imposed at all.

¶ 12 The State concedes that any charge that *could* have been waived under the applicable statutes *should* have been waived, since it is “apparent that defendant is without means to pay” any of these assessments. The evidence at sentencing showed that defendant has an extensive history of mental illness, dating to her childhood, including a diagnosis of schizophrenia and numerous psychiatric hospitalizations. She is also an alcoholic, with a fifth-grade education and no family support of any kind, who has never held a job in her life. Before she was incarcerated in this case, she was homeless, subsisting on her monthly social-security benefit of \$1,000. When the State moved for reimbursement of the cost of court-appointed counsel, the trial court asked if the State had “any evidence to present that [defendant] could pay a nickel,” and the State answered that it did not. The trial court denied the State’s motion on this basis.

¶ 13 There is no doubt that defendant is indigent. She does not have the means to pay any of the charges assessed to her. We appreciate and accept the State’s concession, and we vacate the seven charges listed above, totaling \$330, based on defendant’s inability to pay the amounts assessed.

¶ 14 Lastly, defendant contends that her trial attorney was ineffective for failing to request a waiver of certain remaining costs, even though, at the time they were assessed, “no specific waiver provision[s]” applied to them. See *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984); *People v. Siedlinski*, 279 Ill. App. 3d 1003, 1005-06 (1996) (defense counsel ineffective for failing to request monetary credit defendant was entitled to).

¶ 15 On August 20, 2018, while defendant’s appeal was pending, the legislature passed the Criminal and Traffic Assessment Act, which includes a general “assessment waiver” provision

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that will take effect on July 1, 2019. 725 ILCS 5/124A-20, enacted by P.A. 100-987, § 905-80 (eff. July 1, 2019). The new statute will permit the circuit court to grant “a full assessment waiver exempting [an indigent defendant] from the payment of any assessments.” 725 ILCS 5/124A-20(b)(1). For purposes of the waiver provision, “assessments” are “any costs imposed *** under Article 15 of the Criminal and Traffic Assessment Act.” *Id.* § 124A-20(a). Those costs include, among others, the \$25 Court Services (Sheriff) charge (55 ILCS 5/5-1103 (West 2014)), the \$2 Public Defender Records Automation charge (*id.* § 3-4012), the \$2 State’s Attorney Records Automation charge (*id.* § 4-2002.1(c)), and the \$50 Court System charge (*id.* § 5-110(c)), all of which were assessed against defendant. Sometimes defendant appears to say that counsel should have requested a waiver of *these* charges; at other times defendant appears to say that counsel should have requested a waiver of *all* charges, whether or not they were imposed under Article 15 of the new act.

¶ 16 Either way, defendant’s ineffective-assistance argument is frivolous. The crux of the argument is that the new general waiver provision shows that “the current legislature’s intent is for someone like [defendant] to be exempt from the monetary assessments that she has no ability to pay.” In light of that later-manifested intent, defendant asserts, it was incumbent upon counsel to seek a waiver years before the legislative change; and if counsel had done so, the trial court would have waived the charges at issue.

¶ 17 Counsel “cannot be deemed deficient for failing to predict” future changes in the law. *People v. English*, 2013 IL 112890, ¶ 35; *People v. Davis*, 2014 IL App (4th) 121040, ¶ 24 (counsel has no such “duty of clairvoyance”). And as defendant acknowledges, at the time of her sentencing hearing, the trial court had no statutory authority to waive the charges at issue. So a request for a waiver would have been futile. We have every expectation that the trial court would

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have hewn to the statutes, not to any claims counsel might have made about what the law should, or someday will, be. Thus, defendant cannot show either deficiency or prejudice. Counsel was not ineffective.

¶ 18 For the reasons given above, we vacate the following assessments: the \$5 Electronic Citation charge; the \$190 Felony Complaint Filed (Clerk) charge; the \$25 Automation (Clerk) charge; the \$15 State Police Operations charge; the \$10 Probation and Court Services Operations charge; the \$60 Felony Complaint Conviction (State's Attorney) charge; the \$20 Probable Cause Hearing (State's Attorney) charge; and the \$10 Arrestee's Medical Cost Fund charge. All other monetary assessments are affirmed. We correct the fines and fees order to reflect the vacatur of these charges, totaling \$335. After all eligible charges are offset by defendant's pre-sentence incarceration credit, the total balance due is \$124.

¶ 19 Affirmed in part and vacated in part; mittimus corrected.