

2019 IL App (1st) 170015-U

No. 1-17-0015

Order filed February 14, 2019

Fourth 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).

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. 15 CR 18047
)	
DONALD RUDOLPH,)	Honorable
)	Joan Margaret O'Brien,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GORDON delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirm defendant's conviction for violation of an order of protection, and modify the fines, fees, and costs order.
- ¶ 2 Following a jury trial, defendant Donald Rudolph was convicted of violation of an order of protection (720 ILCS 5/12-3.4(a)(1)(i) (West 2014)) and sentenced to 18 months' imprisonment. On appeal, defendant challenges various fines and fees. For the following reasons, we affirm and modify the fines, fees, and costs order.

¶ 3 Defendant does not dispute the sufficiency of the evidence so we recite only those facts necessary to our disposition. Defendant's brother, Darryl Rudolph, obtained an order of protection against defendant in April 2015, which prohibited defendant from making contact with Darryl or going to his residence. In August 2015, while the order of protection was still in effect, Darryl returned to his home and found defendant on the couch. Defendant left the residence when Darryl confronted him, but was later arrested on a warrant for violating the order of protection. The jury subsequently found defendant guilty and the court sentenced him to 18 months' imprisonment. The court imposed various fines and fees totaling \$659 and gave defendant credit for 425 days of presentence incarceration.

¶ 4 On appeal, defendant challenges several assessments imposed by the trial court. He argues that the \$659 in fines, fees, and costs assessed against him should be reduced by \$544 for a total assessment of \$115. He also claims that his \$5-per-day presentence incarceration credit should be applied to offset certain assessments.

¶ 5 Defendant concedes that he did not preserve these issues, but argues that they are reviewable under Illinois Supreme Court Rule 615(b) (Ill. S. Ct. R. 615(b) (eff. Jan. 1, 1967)) and the second prong of the plain error doctrine. The State acknowledges defendant failed to preserve these issues, but agrees that the order contains several errors. 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) (the rules of waiver and forfeiture apply to the State). The propriety of the imposition of fines and fees is a question of law which we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 6 The parties correctly agree that the \$5 Electronic Citation fee should be vacated because defendant was not convicted of “any traffic, misdemeanor, municipal ordinance, or conservation” offense. 705 ILCS 105/27.3e (West 2014).

¶ 7 Defendant next argues that several fees imposed by the trial court are actually fines that may be offset by his presentence incarceration credit. Under section 110-14 of the Code of Criminal Procedure of 1963, 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 2014). Here, defendant was entitled to a total of \$2125 of credit for the 425 days he spent in custody prior to sentencing. This credit applies only to fines, not 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)).

¶ 8 The parties agree that the \$15 State Police operations charge (705 ILCS 105/27.3a(1.5) (West 2014)) and the \$50 court system charge (55 ILCS 5/5-1101(c)(1) (West 2014)) are fines rather than fees, as they are designated on the order, and thus are subject to offset by defendant’s presentence incarceration credit. We agree. Both assessments are fines because they do not reimburse the State for expenses incurred in defendant’s prosecution and are incorrectly listed on the fines and fees order as fees. 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 (discussing the court

system fee imposed under section 5-1101(c) of the 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 alleges that his presentence incarceration credit should apply to the \$2 Public Defender Automation Fund charge (55 ILCS 5/3-4012 (West 2014)), the \$2 State’s Attorney Records Automation Fund charge, (55 ILCS 5/4-2002.1(c) (West 2014)), the \$190 “Felony Complaint Filed, (Clerk)” charge (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the \$15 court automation charge (705 ILCS 105/27.3a(1) (West 2014)), and the \$15 Court Document Storage Fund charge (705 ILCS 105/27.3c(a) (West 2014)). While this appeal was pending, our supreme court issued its ruling in *People v. Clark*, 2018 IL 122495, ¶ 51, finding that these charges are fees intended to compensate the State for costs incurred in prosecuting defendants and, therefore, may not be offset by defendant’s presentence incarceration credit.

¶ 10 The remaining assessments that defendant summarily addresses (the \$10 Mental Health Court (55 ILCS 5/5-1101(d-5) (West 2014)), the \$5 Youth Diversion/Peer Court (55 ILCS 5/5-1101(e) (West 2014)), the \$5 Drug Court (55 ILCS 5/5-1101(f) (West 2014)), the \$30 Children’s Advocacy Center (55 ILCS 5/5-1101(f-5) (West 2014)), and the \$200 Protective Order Violation (730 ILCS 5/5-9-1.16 (West 2014)) assessments) are designated as fines on the fines, fees, and costs order, and thus are subject to offset. Because the order already reflects that these charges are subject to offset, there is nothing to correct and the clerk of the circuit court is to apply defendant’s *per diem* credit to these fines.

¶ 11 In sum, we vacate the \$5 electronic citation fee and find the \$15 State Police operations and \$50 court systems assessments are fines that, in addition to the other fines listed on the fines,

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fees, and costs order, defendant is entitled to offset with his presentence incarceration 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.

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