

No. 1-17-0301

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 DV 76037
)	
MARLON GILES,)	Honorable
)	Laura Bertucci Smith,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's fines and fees order amended to reflect days of sentencing credit, apply credit against eligible fines, and apply a \$25 credit against the court system fee; claim that additional fees constitute fines entitled to monetary credit is without merit.

¶ 2 Following a bench trial, defendant Marlon Giles was convicted of two counts of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2014)) and sentenced to 70 days in the Cook County Department of Corrections (CCDOC), time actually served, and one year of probation. The trial court also assessed Mr. Giles fines, fees and court costs totaling \$432. On appeal, Mr. Giles does not challenge his convictions or term of imprisonment, but contends that his fines and fees order

should be amended to apply monetary credit against several assessments. We amend the fines and fees order to reflect Mr. Giles's days of sentencing credit, correct the total of his assessments prior to applying credit, apply a \$25 credit against the court system fee, and affirm Mr. Giles's conviction and sentence in all other respects.

¶ 3

I. BACKGROUND

¶ 4 Because Mr. Giles does not challenge his conviction or prison term, we need not discuss the details of the evidence presented at trial or the other proceedings below. The evidence established that on August 4, 2015, Mr. Giles became engaged in an altercation with his girlfriend, Lydia Gibson, and her aunt, Terry Moore, both of whom he lived with. Mr. Giles confronted Ms. Moore about a pair of his shoes that were missing. He then began arguing and physically fighting with Ms. Gibson. Ms. Moore approached them and asked what was happening. Mr. Giles punched Ms. Moore in the face and she fell to the floor. Mr. Giles repeatedly punched and kicked Ms. Moore in the face, causing her to sustain swollen red and black eyes. The trial court found Mr. Giles guilty of two counts of domestic battery for punching and kicking Ms. Moore. The court merged the two counts and sentenced Mr. Giles to 70 days in the CCDOC, time actually served, and one year of probation. The court also assessed Mr. Giles \$432 in fines, fees and court costs.

¶ 5

II. JURISDICTION

¶ 6 Mr. Giles's motion for new trial was denied on November 29, 2016, and he timely filed his notice of appeal on December 7, 2016. This court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. Rs. 603 (eff. Feb. 6, 2013), 606 (eff. Dec. 11, 2014)).

¶ 7

III. ANALYSIS

¶ 8 On appeal, Mr. Giles contends that his fines and fees order should be amended by applying monetary credit for the days he spent in presentencing custody against several assessments. Mr. Giles points out that the order does not reflect that he spent 70 days in custody which entitles him to receive monetary credit. Mr. Giles contends that he is entitled to apply \$240 against three fines that are designated as subject to offset by the presentence monetary credit. He further argues that four additional assessments that are labeled as fees are actually fines which are also eligible to be offset by his monetary credit.

¶ 9 Mr. Giles and the State both acknowledge that Mr. Giles did not challenge the assessments in the trial court. See *People v. Harvey*, 2018 IL 122325, ¶ 15. Both parties agree, however, that Mr. Giles's entitlement to monetary credit is not subject to forfeiture and may be raised for the first time on appeal. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008); *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 26. The propriety of the imposition of fines and fees is a question of law that we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 10 As a threshold matter, the parties note, and we concur, that the total amount of Mr. Giles's assessments on the fines and fees order is incorrect. The order indicates the total is \$450. Our calculation, which agrees with that of the parties, indicates that the correct total is \$432. We direct the clerk of the circuit court to correct the fines and fees order to reflect that the total of Mr. Giles's assessments, before any credit is applied, is \$432.

¶ 11 Mr. Giles next contends, and the State agrees, that his fines and fees order should be amended to reflect that he served 70 days in presentence custody in order for him to receive the monetary credit against his fines to which he is entitled. The line on the order where the number of days served is to be indicated, allowing for calculation of his monetary credit, was erroneously

left blank. The parties agree that once the number of days served is entered, his monetary credit can be applied against his eligible fines to reduce his assessment.

¶ 12 Pursuant to section 110-14 of the Code of Criminal Procedure (Code) (725 ILCS 5/110-14 (West 2014)), Mr. Giles is entitled to have a credit applied against his fines of \$5 for each day he spent in presentence custody. Here, the record indicates that Mr. Giles served 70 days in presentence custody. Pursuant to Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999), we modify Mr. Giles's fines and fees order to reflect that he served 70 days in custody.

¶ 13 Mr. Giles contends that he is due monetary credit against several of his assessments. Based on his 70 days in custody, Mr. Giles is entitled to a maximum credit of \$350 against his eligible fines.

¶ 14 The credit under section 110-14 can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee, we consider the nature of the assessment rather than its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Our supreme court has defined a "fine" as "punitive in nature" and "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *Id.* (quoting *Jones*, 223 Ill. 2d at 581). A "fee," on the other hand, is "a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *Id.* (quoting *Jones*, 223 Ill. 2d at 582).

¶ 15 Mr. Giles contends, and the State agrees, that he is entitled to apply a credit of \$230 against the \$200 domestic violence fine (730 ILCS 5/5-9-1.5 (West 2014)) and the \$30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2014)). The parties agree that these fines are expressly designated on the order assessing fines, fees, and costs against Mr. Giles as "fines" to be offset by the monetary credit pursuant to section 110-14 of the Code.

¶ 16 Mr. Giles also contends that the \$10 domestic battery fine (730 ILCS 5/5-9-1.6 (West 2014)) is a fine entitled to offset. The State disagrees and points out that the statute expressly states that the fine cannot be offset by the credit. In reply, Mr. Giles claims this court previously found that the credit applies to the domestic battery fine in *People v. Irvine*, 379 Ill. App. 3d 116, 132-33 (2008).

¶ 17 Mr. Giles misreads *Irvine*. In *Irvine*, this court merely listed the \$10 domestic battery fine as one of three fines that were imposed on the defendant. *Id.* The other two fines assessed were the \$200 domestic violence fine, and a \$4 criminal/traffic conviction surcharge (730 ILCS 5/5-9-1(c-9) (West 2004)). We stated that the \$4 surcharge was found subject to offset by our supreme court in *Jones*. *Id.* at 133 (citing *Jones*, 223 Ill. 2d at 587). We then found that the defendant was entitled to apply a credit of \$10 against his fines for the two days he served in presentence custody. *Id.* We did not find that the \$10 domestic battery fine was subject to offset.

¶ 18 The statute authorizing the domestic battery fine expressly states that the “penalty shall not be considered a part of the fine for purposes of any reduction in the fine for time served either before or after sentencing.” 730 ILCS 5/5-9-1.6 (West 2014). Accordingly, Mr. Giles is precluded from applying his presentence credit against this fine.

¶ 19 Mr. Giles next contends, the State agrees, and we concur, that Mr. Giles is due full credit for the \$25 court system fee (55 ILCS 5/5-1101(c) (West 2014)). The parties agree that, although the charge is labeled as a fee on the order assessing fines, fees, and costs, this court has previously held that it is a fine because it does not compensate the State for expenses incurred in the prosecution of a defendant, and thus, it is subject to offset by the sentencing credit. *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17.

¶ 20 Mr. Giles next contends that he is entitled to credit against the \$15 automation fee (705

ILCS 105/27.3a(1) (West 2014)), and the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)). Mr. Giles argues that these assessments are fines rather than fees because they do not reimburse the State for the costs incurred in prosecuting a defendant, but instead, finance a component of the court system for the general costs of litigation.

¶ 21 Our supreme court recently considered and rejected the arguments Mr. Giles presents here. *People v. Clark*, 2018 IL 122495. In *Clark*, the court analyzed the language in the statutes that authorize the imposition of the challenged assessments. The court found that the plain language of the authorizing statute indicates that the automation charge is a fee that compensates the clerk of the circuit court for the necessary costs of creating and maintaining automated records in a record keeping system. *Id.* ¶ 40. Similarly, the document storage charge is a fee that compensates the clerk of the circuit court for the costs of creating and maintaining a document storage system. *Id.* ¶ 48. Because all cases generate documents that must be automated, stored, and maintained by the clerk, the court found that the above fees are related to the defendant's prosecution. *Id.* ¶¶ 40, 48. Accordingly, the court held that these assessments are fees, not fines, and therefore, not subject to presentence incarceration credit. *Id.* ¶¶ 41, 49. *Clark* makes clear that Mr. Giles is not entitled to offset these fees with his presentence custody credit.

¶ 22 Finally, Mr. Giles contends that he is entitled to credit against the \$25 court services (sheriff) fee (55 ILCS 5/5-1103 (West 2014)). Mr. Giles argues that this assessment is a fine because it applies to all defendants who are found guilty of an offense. He further argues that the assessment does not compensate the State for the costs of prosecuting a particular defendant, but instead, defrays the costs of court security incurred by the sheriff.

¶ 23 This court has considered challenges to this assessment and determined that it is a fee, not a fine, and therefore, not subject to presentence incarceration credit. See *People v. Adair*, 406 Ill.

App. 3d 133, 144-45 (2010) (finding the plain language of the statute indicates it is a fee to defray the costs of court security during the defendant's court proceedings); *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006) (holding that the charge is a fee because it is compensatory and a collateral consequence of the defendant's conviction). See also *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the court services fee is a fee rather than a fine). We adhere to the reasoning in our prior decisions and find that the court services assessment is a fee rather than a fine. Therefore, Mr. Giles is not entitled to offset this fee with his presentence custody credit.

¶ 24

IV. CONCLUSION

¶ 25 For these reasons, we order the clerk of the circuit court to amend Mr. Giles's fines and fees order to reflect that he served 70 days in custody. We direct the clerk of the circuit court to correct the order to reflect that the total of Mr. Giles's assessments, before any credit is applied, is \$432. Mr. Giles's presentence credit should be applied against what is reflected on the order as \$230 in eligible fines. We direct the clerk of the circuit court to further amend the order to reflect a credit of \$25 to offset the court system fee. Mr. Giles's amended total amount due after applying the credit should be \$177. We affirm Mr. Giles's conviction and sentence in all other respects.

¶ 26 Affirmed as modified; fines and fees order amended.