

2019 IL App (1st) 171163-U

No. 1-17-1163

Order filed May 16, 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 6141
	)	
ANTHONY DANIELS,	)	Honorable
	)	Thomas J. Byrne,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE REYES delivered the judgment of the court.  
Justices Gordon and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* The fines, fees, and costs order is corrected to reflect vacatur of one fine and presentence custody credit against applicable fines.

¶ 2 Following a bench trial, defendant Anthony Daniels was convicted of attempted robbery (720 ILCS 5/8-4, 18-1(a) (West 2016)) and sentenced to 42 months in prison. On appeal, defendant does not challenge his conviction or sentence. He contends only that the fines, fees, and costs order should be corrected to vacate one fine and to apply *per diem* presentence custody

credit to a number of other assessed fines. For the reasons that follow, we order correction of the fines, fees, and costs order.

¶ 3 Defendant was charged by information with one count of attempted robbery. At trial, the State presented evidence that on April 8, 2016, defendant approached the victim on foot on a Chicago sidewalk. Defendant said “give it up” and reached into the victim’s pocket, which contained money. During this interaction, two police officers pulled up in an unmarked vehicle and arrested defendant.

¶ 4 The trial court found defendant guilty of attempted robbery. Subsequently, the court sentenced defendant to 42 months in prison. The court also imposed \$489 in fines, fees, and costs, and indicated that defendant would be credited with 393 days of presentence custody. While the written order assessing fines, fees, and costs includes a preprinted notation that “Allowable credit toward fine will be calculated,” it does not specify the amount of monetary credit defendant would receive.

¶ 5 On appeal, defendant contends that this court should vacate one fine imposed by the trial court and grant him \$5-per-day presentence custody credit against seven other assessments. He acknowledges that he did not challenge his fines and fees at sentencing or in a postsentencing motion. Nevertheless, defendant argues that we may reach his arguments regarding fines and fees via Illinois Supreme Court Rule 615(b), under the doctrine of plain error, or because trial counsel was ineffective. Relying on *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 38, the State has responded that this court may review unpreserved claims regarding monetary assessments under the plain error doctrine. By taking this position, the State has waived any forfeiture

argument. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 25; *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 6 We note that our Supreme Court recently adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the “imposition or calculation of fines, fees, and assessments or costs” and “application of *per diem* credit against fines.” Ill. S. Ct. R. 472(a)(1), (2) (eff. Mar. 1, 2019). Rule 472 provides that, effective March 1, 2019, the circuit court retains jurisdiction to correct these errors at any time following judgment in a criminal case, even during the pendency of an appeal. *People v. Barr*, 2019 IL App (1st) 163035, ¶¶ 5-6 (citing Ill. S. Ct. R. 472(a) (eff. Mar. 1, 2019)). “No appeal may be taken” on the ground of any of the sentencing errors enumerated in the rule unless that alleged error “has first been raised in the circuit court.” Ill. S. Ct. R. 472(c) (eff. Mar. 1, 2019).

¶ 7 Defendant here did not raise his challenges to the fines and fees order in the circuit court and, instead, raises them for the first time on appeal. However, as defendant filed his notice of appeal prior to the effective date of Rule 472 and this court has found that the rule applies prospectively, we will address the merits of his claims. *Barr*, 2019 IL App (1st) 163035, ¶¶ 6, 8, 15. Our review is *de novo*. *Id.* ¶ 16.

¶ 8 Defendant first contends that we must vacate the \$25 Violent Crime Victim Assistance fine imposed pursuant to section 10(c) of the Violent Crime Victims Assistance Act. 725 ILCS 240/10(c) (West 2010). Defendant asserts, and the State correctly concedes, that subsection (c), which provided for this assessment, was only effective through July 15, 2012. See Pub. Act 97-816, § 10 (eff. July 16, 2012) (amending 725 ILCS 240/10). Because the instant crime was

committed after this date, the assessment should not have been imposed. As such, we vacate the assessment.

¶ 9 Defendant next contends that he is entitled to *per diem* presentence custody credit against seven assessments imposed by the trial court, even though all seven are designated on the fines, fees, and costs order as “FEES AND COSTS *NOT* OFFSET BY THE \$5 PER-DAY PRE-SENTENCE INCARCERATION CREDIT.” (Emphasis in original.) These seven assessments are (in order of listing on the preprinted fines, fees, and costs form): the \$190 Felony Complaint Filed (Clerk) fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)); the \$25 Automation (Clerk) fee (705 ILCS 105/27.3a(1) (West 2016)); the \$15 State Police Operations Fee (705 ILCS 27.3a(1.5), (5) (West 2016)); the \$2 Public Defender Records Automation Fee (55 ILCS 5/3-4012 (West 2016)); the \$2 State’s Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2016)); the \$25 Document Storage (Clerk) fee (705 ILCS 105/27.3c (West 2016)); and a \$50 Court System fee (55 ILCS 5/5-110(c) (West 2016)).

¶ 10 Under section 110-14(a) of the Code of Criminal Procedure of 1963, an offender who has been assessed one or more fines is entitled to a \$5-per-day credit for time spent in presentence custody as a result of the offense for which the sentence was imposed. 725 ILCS 5/110-14(a) (West 2016). It is well-established that the presentence custody credit applies only to reduce fines, not fees. *People v. Clark*, 2018 IL 122495, ¶ 10. A “fine” is punitive in nature, while a “fee” is assessed in order to compensate the State or recoup expenses incurred by the State in prosecuting a defendant. *Id.* ¶ 11. Here, the trial court credited defendant with 393 days of presentence custody, which would entitle him to up to \$1,965 in *per diem* credit against his fines.

¶ 11 The State agrees with defendant that he is entitled to presentence incarceration credit against two assessments he has identified: the \$15 State Police Operations Fee and the \$50 Court System fee. We accept the State's concession and hold that these assessments are fines against which defendant can receive \$5-per-day credit for the time he spent in presentence custody. See *People v. Robinson*, 2017 IL App (1st) 161595, ¶ 135 (both the \$15 State Police Operations Fee and the \$50 Court System fee are fines subject to *per diem* credit).

¶ 12 The State does not concede defendant's claim for credit against the remaining five assessments he has identified: the \$190 Felony Complaint fee, the \$25 Automation (Clerk) fee, the \$2 Public Defender Records Automation Fee, the \$2 State's Attorney Records Automation Fee, and the \$25 Document Storage (Clerk) fee. After defendant filed his brief in this appeal, our supreme court held in *People v. Clark* that all five of these assessments are fees, not fines, and therefore not subject to offset by the \$5-per-day presentence custody credit. *Clark*, 2018 IL 122495, ¶¶ 22, 27, 34, 41, 49. Based on *Clark*, we conclude that these five assessments are fees and, therefore, may not be offset by defendant's presentence custody credit.

¶ 13 For the reasons explained above, we affirm defendant's conviction and sentence and vacate the \$25 Violent Crime Victim Assistance fine. We further find that the \$15 State Police Operations Fee and the \$50 Court System fee are offset by presentence custody credit. Taking into account that the order assessing fines, fees, and costs already correctly reflects that defendant is entitled to \$50 of *per diem* credit (for the \$10 Mental Health Court fine (55 ILCS 5/5-1101(d-5) (West 2016)), the \$5 Youth Diversion / Peer Court fine (55 ILCS 5/5-1101(e) (West 2016)), the \$5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2016)), and the \$30 Children's

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Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2016)), the total amount of fines, fees, and costs is reduced from \$489 to \$349. We correct the fines, fees, and costs order accordingly.

¶ 14 Affirmed; fines, fees, and costs order corrected.