FOURTH DIVISION
November 12, 2015

No. 1-13-3413

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. 13 CR 9467
	)	
LAWRENCE MILLER,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held*: We modify defendant's sentence because he was entitled to presentence incarceration credit to offset the $50 court system fine, amend the mittimus to reflect 173 days of presentence custody credit, and affirm the judgment in all other respects.

¶ 2 Following a bench trial, defendant Lawrence Miller was convicted of possession of a controlled substance and sentenced to three years' imprisonment. On appeal, defendant

challenges certain pecuniary penalties imposed by the court, and concedes that he was entitled to 173 days of presentence credit, not the 174 days he was awarded. We affirm as modified.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver. The evidence at trial showed that Officer Cox was conducting narcotics surveillance in the area of 1325 South Karlov Avenue in Chicago at about 9:10 a.m. on April 19, 2013. Cox saw defendant waving cars over to the side of the road. On three separate occasions, a car pulled over, defendant approached and spoke to the driver, the driver tendered money to defendant, and defendant reached into his sleeve and gave the driver a small item. At Cox's direction, Officer Theodore detained defendant and Officer Mandile recovered seven ziploc bags of suspect heroin from defendant's left jacket sleeve. The parties stipulated that the items weighed 3.2 grams and tested positive for heroin. A custodial search of defendant at the police station by Officer Deeren revealed $50 in defendant's pants pocket. At the conclusion of the trial, the court found defendant guilty of possession of a controlled substance, but not guilty of intent to deliver. The court sentenced defendant to three years' imprisonment, imposed various fines and fees totaling $1,154, and awarded him 174 days of presentence custody credit on October 9, 2013. Defendant raises no issues concerning the validity of his conviction.

¶ 4 On appeal, defendant contends that $54 of his total assessments are fines and should be offset by the time he spent in custody before sentencing. See 725 ILCS 5/110-14(a) (West 2012) (an incarcerated person against whom a fine is levied is entitled to a credit of $5 per day for every day served in custody prior to sentencing). In particular, defendant maintains the fines imposed against him subject to offset were the $2 State's Attorney records automation fee (55

ILCS 5/4-2002.1(c) (West 2012)), the $2 public defender records automation fee (55 ILCS 5/3-4012 (West 2012)), and the $50 court system charge (55 ILCS 5/5-1101(c)(1) (West 2012).

¶ 5 We find the $2 State's Attorney records automation fee and the $2 public defender records automation fee are compensatory in nature and thus not a fine subject to offset. The Fourth District of this court found that the State's Attorney records automation fee is compensatory because it reimburses the State for its expenses related to automated record-keeping systems. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. We agreed with the Fourth District and found that both the $2 State's Attorney records automation fee and the $2 public defender records automation fee are in fact fees. See *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (stating that "because the statutory language of both the public defender and State's Attorney Records Automation fees is identical except for the name of the organization, we find no reason to distinguish between the two statutes, and conclude both charges constitute fees").

¶ 6 Defendant, however, maintains that *Rogers*, and the cases following *Rogers*, misconstrue the purpose of the public defender and State's Attorney records automation fees because the establishment of a record-keeping system is a prospective aim, and thus has nothing to do with the cost associated with the prosecution of any particular defendant. We disagree with defendant where the State's Attorney's Office would have utilized its automated record keeping systems in the prosecution of defendant when it filed charges with the clerk's office, made copies of discovery, filed motions on defendant's case, and would have reviewed defendant's criminal background through the LEADs database prior to making any offer in exchange for a plea.

¶ 7 Furthermore, defendant was represented by the public defender's office at trial, and, therefore, that office would have similarly utilized its automated record keeping systems in defending him. In so finding, we disagree with defendant's assertion that the public defender records automation fee is assessed regardless of whether the public defender represented the defendant. The statute specifically states that the "Cook County Public Defender shall be entitled to a $2 fee to be paid by the defendant on a judgment of guilty *** to discharge the expenses of the Cook County Public Defender's office for establishing and maintaining automated record keeping systems." 55 ILCS 5/3-4012 (West 2012). We thus follow *Rogers* and *Bowen* and likewise find the public defender and State's Attorney records automation charges are fees to which defendant is not entitled to presentence incarceration credit.

¶ 8 Defendant also contends, and the State correctly agrees, that the $50 court system charge is a fine and defendant is thus entitled to offset his presentence custody against this fine. Following the supreme court in *People v. Graves*, 235 Ill. 2d 244 (2009), the Second and Third Districts of this court have found that the court system fee is a "fine" used to finance the court system, and therefore defendant is entitled to a $5 per day credit against that charge for time spent in presentence custody. See, *e.g.*, *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 17-21; *People v. Ackerman*, 2014 IL App (3d) 120585, ¶¶ 28-30. We find these opinions well-reasoned, and, likewise conclude that defendant's presentence custody credit can be used to offset the $50 court system charge.

¶ 9 Finally, the parties correctly agree that defendant was entitled to 173 days of presentence custody credit. The record shows defendant was arrested on April 19, 2013, and sentenced on

October 9, 2013. Nevertheless, he received 174 days of credit for the days he spent in presentence custody.

¶ 10 A sentencing order may be corrected at any time. *People v. Latona*, 184 Ill. 2d 260, 278 (1998). The right to receive *per diem* credit is mandatory, and normal waiver rules do not apply. *People v. Williams*, 328 Ill. App. 3d 879, 887 (2002). A defendant is statutorily entitled to credit for all time "spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2012); *Latona*, 184 Ill. 2d at 270. A defendant held in custody for any part of a day should be given credit against his sentence for that day. *People v. Smith*, 258 Ill. App. 3d 261, 267 (1994). However, a defendant is not entitled to presentence custody credit for the date of sentencing. *People v. Williams*, 239 Ill. 2d 503, 510 (2011). Therefore, we award defendant presentence custody credit from April 19, 2013, through October 8, 2013, which amounts to 173 days.

¶ 11 For the foregoing reasons, we find that defendant is entitled to a $5 per day custody credit to offset the $50 court system fee, amend the mittimus to award defendant 173 days of presentence custody credit, and affirm the judgment of the trial court in all other respects.

¶ 12 Affirmed as modified.