2015 IL App (1st) 140902-U

SIXTH DIVISION
Order filed: October 30, 2015

No. 1-14-0902

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. 12 CR 18839
	)	
JONATHAN STOKES,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court was affirmed as modified where the order assessing the defendant's fines, fees, and costs should have reflected the amount of his presentence incarceration credit, offset certain fines from that credit, and excluded fees not applicable to the defendant.

¶ 2 Following a bench trial, the circuit court found the defendant, Jonathan Stokes, guilty of possession of a controlled substance (720 ILCS 570/402(c) (West 2012)), and sentenced him to 18 months' imprisonment with 1 year mandatory supervised release (MSR). The defendant was also assessed certain fines, fees, and costs. On appeal, the defendant argues that the court erred

in its imposition of some of the fines and fees. For the reasons that follow, we affirm with modifications.

¶ 3 The facts of this case are not in dispute. On October 10, 2012, the State charged the defendant by information with one count of possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(10) (West 2012)). The charge generally alleged that the defendant knowingly possessed 10 or more grams, but less than 30 grams, of phencyclidine (PCP) with the intent to deliver.

¶ 4 In January 2014, the case proceeded to a bench trial. The evidence adduced at trial, in relevant part, established that, on September 10, 2012, Officer Shawn Alonzo was conducting surveillance in the backyard of an abandoned house located at 1544 South Sawyer Avenue in Chicago. Officer Alonzo observed the defendant, who was approximately 15 to 20 feet away, holding a plastic bag and climbing through a hole in a fence. When the defendant noticed Officer Alonzo, he dropped the bag and ran. Before pursuing the defendant, Officer Alonzo recovered the plastic bag, which contained 28 miniature bags holding "a green leafy substance saturated in" what he believed was PCP. Officer Alonzo and his partner, Officer Bocanegra, pursued the defendant and eventually apprehended him and took him into custody. Jason George, a forensic scientist with the Illinois State Police, confirmed that the defendant's plastic bag consisted of 10.8 grams of plant material that contained PCP.

¶ 5 After hearing all of the evidence, the circuit court found that there was insufficient evidence to support a conviction for possession of a controlled substance with intent to deliver. Instead, the court found the defendant guilty of the lesser-included offense, possession of a controlled substance.

¶ 6 At the sentencing hearing, the circuit court allowed the parties to suggest corrections or amendments to the presentence investigation report; however, neither the State nor the defendant offered any corrections. After considering the aggravating and mitigating factors, the court sentenced the defendant to 18 months' imprisonment with 1 year MSR. The court also gave the defendant 537 days' credit for time served. As to the defendant's assessed fines, fees, and costs, the following colloquy occurred:

"THE COURT: *** Fines and costs will be assessed. Do you have that in number?

MS. MELIN [(ASSISTANT STATE'S ATTORNEY)]: $1,140."

The defendant filed a motion to reconsider which the court denied.

¶ 7 In its written order assessing fines, fees, and costs, the circuit court ordered the defendant to pay several charges. For "FINES OFFSET by the $5 per-day pre-sentence incarceration credit pursuant to 725 ILCS 5/110-14(a) [(West 2012)]," the defendant was ordered to pay, *inter alia*, $10 for mental health court (55 ILCS 5/5-1101(d-5) (West 2012)); $5 for youth diversion/peer court (55 ILCS 5/5-1101(e) (West 2012)); $5 for drug court (55 ILCS 5/5-1101(f) (West 2012)); and $30 for the children's advocacy center (55 ILCS 5/5-1101(f-5) (West 2012)). For the "FEES AND COSTS *NOT* OFFSET by the $5 per-day pre-sentence incarceration credit," he was ordered to pay, *inter alia*, $250 for the "State DNA ID System" applicable to felons (730 ILCS 5/5-4-3(j) (West 2012)); $15 for the State Police operations fee (705 ILCS 105/27.3a-1.5 (West 2012)); $2 for the Public Defender records automation fee (55 ILCS 5/3-4012 (West 2012)); $2 for the State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2012))[1]; and $5 for the electronic citation fee for the clerk and arresting agency (705 ILCS 105/27.3e (West 2012)).

[1] The order cites "55 ILCS 5/4–2002.1(a) [(West 2012)];" however, the applicable section is 4-2002.1(c) of the Counties Code (55 ILCS 5/4-2002.1(c) (West 2012)).

In the order, the total for all of the fees, fines and costs was calculated to be $1,149.[2] The order also states that the defendant served 537 days in custody before sentencing and that the "[a]llowable credit toward fine will be calculated." However, the parties did not indicate the amount of total credit or the amount of credit remaining after the applicable fines, fees, and costs were deducted.

¶ 8 This appeal followed.

¶ 9 The defendant's argument on appeal is that the circuit court erred by: (1) failing to award him presentence incarceration credit; (2) improperly imposing several fines, fees and costs against him; and (3) failing to apply his credit toward creditable fines. "The propriety of a *** court's imposition of fines and fees raises a question of statutory interpretation, which we review *de novo*." *People v. Price*, 375 Ill. App. 3d 684, 697 (2007). Additionally, we note that the general rules of forfeiture do not apply to sentence credit requests (*People v. Morrison*, 375 Ill. App. 3d 545, 551 (2007)) and void orders for fees, fines, and costs (*People v. Marshall*, 242 Ill. 2d 285, 302 (2011)); rather, a defendant may raise these issues for the first time on appeal.

¶ 10 The defendant initially argues that the circuit court failed to award him $2,685 worth of credit for the time that he spent in presentence custody as prescribed by section 110-14(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-14(a) (West 2012)). The State concedes that the defendant should have been awarded $2,685 in presentence incarceration credit, and we agree. Section 110-14(a) of the Code, in pertinent part, states: "[a]ny person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant." 725 ILCS 5/110-14(a) (West 2012). In this case, the charged

[2] This total is $9 greater than the amount verbally indicated at the sentencing hearing.

offense, possession of a controlled substance, was bailable (725 ILCS 5/110-4(a) (West 2012)), and the record establishes that the defendant served 537 days in jail prior to his sentencing. Consequently, under section 110-14(a) of the Code, he was entitled to a credit of $2,685. 725 ILCS 5/110-14(a) (West 2012).

¶ 11 The defendant next argues that several of his assessed charges are actually fines; accordingly, they should be offset using his presentence incarceration credit. Specifically, he contends that the following charges should be offset: $10 for mental health court; $5 for youth diversion/peer court; $5 for drug court; $30 for the children's advocacy center; $15 for the State Police operations "fee;" $2 for the Public Defender records automation fee; and $2 for the State's Attorney records automation fee. The State concedes, and we agree, that the $10 for mental health court; $5 for youth diversion/peer court, $5 for drug court, $30 for the children's advocacy center, and $15 for the State Police operations should be offset from the defendant's presentence incarceration credit. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31; *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 19. The order assessing the defendant's fines, fees, and costs, in fact, states that the $10 mental health, $5 youth diversion/peer court, $30 children's advocacy center, and $5 drug court fines should be offset by the credit; however, this offset did not occur because the credit was not calculated.

¶ 12 Although it concedes that the $10 mental health, $5 youth diversion/peer court, $30 children's advocacy center, $5 drug court, and $15 State Police operations charges are fines, the State argues that the Public Defender and State's Attorney records automation fees, each for $2, are fees and not fines, and thus they should not be offset. We agree with the State on this issue.

¶ 13 It is well established that the presentence incarceration credit (725 ILCS 5/110-14(a) (West 2012)) applies only to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006).

However, courts may find that a charge labeled as a "fee" is actually, in effect, a fine. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). If a statute labels a charge as a fee or fine, this "constitutes strong evidence" as to the charge's characterization; however, the legislature's label is not definitive. *Jones*, 223 Ill. 2d at 599. In *Jones*, 223 Ill. 2d at 582, our supreme court explained, "[b]roadly speaking, a fine is a part of the punishment for a conviction, whereas a fee or cost seeks to recoup expenses incurred by the [S]tate—to compensate the [S]tate for some expenditure incurred in prosecuting the defendant." (Internal quotation marks omitted.) The most important factor in a court's determination is to analyze whether the charge "is intended to reimburse the [S]tate for some cost incurred in [a] defendant's prosecution." *Jones*, 223 Ill. 2d at 600.

¶ 14 Section 4-2002.1(c) of the Counties Code (55 ILCS 5/4-2002.1(c) (West 2012)), in relevant part, states that a defendant must pay the $2 fee "on a judgment of guilty *** for *** any felony, misdemeanor, or petty offense to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems." Similarly, section 3-4012 of the Counties Code (55 ILCS 5/3-4012 (West 2012)), which prescribes the Public Defender records automation charge, in pertinent part, states that a defendant must pay the $2 fee "on a judgment of guilty *** for *** any felony, misdemeanor, or petty offense to discharge the expenses of the Cook County Public Defender's office for establishing and maintaining automated record keeping systems." In *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30 and *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 108-09, the fourth district of the appellate court found that, because the plain language of section 4–2002.1(c) clearly indicates that the charge's purpose is to reimburse the State for expenses related to automated record keeping as a collateral function of the prosecutorial process, the State's Attorney records automation charge is a fee.

According to *Rogers* and *Warren*, this charge is not intended to be punitive in nature. *Rogers*, 2014 IL App (4th) 121088, ¶ 30; *Warren*, 2014 IL App (4th) 120721, ¶¶ 108-09.

¶ 15 Because the statutory language of both the Public Defender and State's Attorney records automation charges is identical except for the names of the benefitting organizations (see 55 ILCS 5/3–4012, 4–2002.1(c) (West 2012)), we find no reason to draw a distinction between the two and conclude that both of these charges constitute fees. We agree with the holding in *Rogers* and *Warren*, and find that the record automation charges for the State's Attorney and Public Defender are fees and are not subject to offset by the defendant's presentence incarceration credit.

¶ 16 Lastly, the defendant argues that two of his fees should be vacated; namely, the: (1) $5 electronic citation fee; and (2) $250 DNA analysis fee. The State concedes that these fees should be vacated, and we agree.

¶ 17 The $5 electronic citation fee applies only to defendants in "traffic, misdemeanor, municipal ordinance, or conservation case[s];" not to defendants who have been convicted of felonies. 705 ILCS 105/27.3e (West 2012); *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. In this case, the defendant was convicted of a felony; therefore, the assessment of the electronic citation fee was inappropriate, and we vacate it.

¶ 18 We also vacate the defendant's $250 DNA analysis fee imposed under section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2012)). In *People v. Marshall*, 242 Ill. 2d 285, 301 (2011), our supreme court held that "it is illogical to conclude that [section 5-4-3] requires duplicative samples and fees." Here, the defendant was previously convicted of a felony for possession of a controlled substance in August 2005. Based upon this prior

conviction, he submitted a DNA sample which was catalogued in the State's system. Accordingly, this fee is duplicative and we vacate it pursuant to *Marshall*.

¶ 19 For the foregoing reasons, we modify the circuit court's order assessing fines, fees, and costs as follows: (1) award a presentence custody credit of $2,685; (2) apply the credit to the $10 mental health, $5 youth diversion/peer court, $30 children's advocacy center, $5 drug court, and $15 State Police operations fines; and (3) vacate the $5 electronic citation fee and $250 DNA analysis fee. We otherwise affirm the defendant's conviction and sentence.

¶ 20 Affirmed as modified.