

No. 1-10-0352

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).

SECOND DIVISION
April 19, 2011

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. 06 C2 20716
)	
CONSTANTIN PALANCEANU,)	Honorable
)	Timothy J. Chambers,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred
in the judgment.

O R D E R

HELD: Summary dismissal of post-conviction petition affirmed; fines and fees order modified; *per diem* credit for time spent in pre-sentence custody applied.

Defendant Constantin Palanceanu appeals from the summary dismissal of his petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-2 *et seq.* (West 2006). He

raises no substantive issue with regard to his petition, but, rather, challenges, for the first time, the trial court's assessment of \$1,560 in fines and fees following his 2007 plea of guilty to aggravated driving under the influence (DUI) (625 ILCS 5/11-501(a) (West 2006)) in exchange for a one year term of imprisonment. He also seeks application of a \$5 credit for each day he spent in pre-sentence custody.

The record shows that defendant did not move to withdraw his guilty plea, or attempt to perfect a direct appeal from the judgment entered thereon. Instead, defendant filed the instant post-conviction petition in July 2009 alleging that his plea was not knowing or voluntary because the court failed to advise him that his conviction could be used to enhance any sentence in a later unrelated case. The circuit court summarily dismissed the petition, finding that defendant failed to state a claim and that the petition was patently without merit.

In this appeal, defendant solely challenges the pecuniary penalties imposed by the trial court following his plea. The State initially responds that defendant forfeited these issues because he did not raise them in his post-conviction petition. Defendant argues that these fines constitute "void" judgments that may be challenged at any time.

In *People v. Caballero*, 228 Ill. 2d 79, 87 (2008), the supreme court held that a claim for *per diem* monetary credit

under section 110-14 of the Code of Civil Procedure (Code) is a statutory right and is therefore not cognizable under the Act. The same court recognized, however, that this statutory claim may be considered an " 'application of the defendant' " made under the section and may be raised at any stage of court proceedings, even on appeal from a post-conviction ruling. *Caballero*, 228 Ill. 2d at 88. By analogy, we conclude that here, where the basis for granting the application of defendant is clear and available from the record, we may, in the " 'interests of an orderly administration of justice' " consider the issue raised and grant the relief requested. *Caballero*, 228 Ill. 2d at 88.

Challenges to assessed fines and fees and requests for application of *per diem* credit raise questions of statutory interpretation which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

Defendant first contends, and the State concedes, that we should vacate the \$1,000 fine for committing a subsequent DUI offense, authorized under section 11-501.01(f) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-501.01(f) (West 2008)). The parties posit that this section violates the prohibition against *ex post facto* laws because it did not take effect until June 1, 2008, almost two years after defendant committed the offense on October 21, 2006. The legislative history indicates otherwise.

The fines and fees order entered in this case shows that the charge was assessed under section "11-501(j)" of the Vehicle Code, the section in effect at the time of defendant's offense. That section provided that "if the person has been previously convicted of [a DUI offense], the fine shall be \$1,000." 625 ILCS 5/11-501(j) (West 2006).

In Public Act 95-578 (eff. June 1, 2008) (adding 625 ILCS 5/11-501.01), the General Assembly amended the Code by deleting section 11-501(j), and moving it, verbatim, to section 11-501.01(f). This action constitutes "a continuation of the existing law and not the enactment of new law upon the subject" (*People v. Bullard*, 61 Ill. 2d 277, 281 (1975)), which would implicate *ex post facto* concerns. It is thus clear that at all relevant times, there was statutory authority for the assessment of a \$1,000 Subsequent DUI Offense fine which was properly assessed against defendant, who does not dispute that he has been previously convicted of a DUI offense. *People v. Gordon*, 378 Ill. App. 3d 626, 641 (2007).

Defendant next contends that we should vacate the \$5 Court Services fee (55 ILCS 5/5-1103 (West 2006)) because the enacting statute indicates that the charge may only be assessed for certain enumerated convictions. The State responds that the court properly assessed the fee because it is applicable to all criminal cases.

This court has interpreted section 5-1103 of the Counties Code to allow for the assessment of the court services fee under any criminal conviction. *People v. Adair*, No. 1-09-2840, slip op. at 20 (Ill. App. Dec. 10, 2010); *People v. Williams*, No. 1-09-1667, slip op. at 10 (Ill. App. Dec. 2, 2010). We reasoned that the clear purpose of the fee is to defray the costs of court security, and in light of the section's clear purpose, we have explicitly rejected defendant's interpretation of the wording. *Adair*, No. 1-09-2840, slip op. at 21-22. We see no reason to depart from *Adair* and *Williams*, and, likewise, find that the \$5 court services fee was properly assessed against defendant.

Defendant also contends that the \$10 Arrestee's Medical Costs Fund fee (730 ILCS 125/17 (West 2006)) was unauthorized because he required no medical care while in custody and the county jail incurred no medical costs related to him. Although the State concedes that this fee should be vacated, we disagree with both parties given our recent pronouncement on the subject.

This court has rejected defendant's interpretation of the statute, as it existed in 2006, that the fee could not be assessed unless the particular defendant incurred medical expenses while he was in custody. *People v. Coleman*, 404 Ill. App. 3d 750, 754 (2010); *People v. Hubbard*, 404 Ill. App. 3d 100, 104-05 (2010); *People v. Jones*, 397 Ill. App. 3d 651, 663 (2009); *People v. Evangelista*, 393 Ill. App. 3d 395, 400 (2009). This

court has explicitly held that "the mandatory and unequivocal language of [the statute] shows that the county is entitled to the \$10 charge, whether or not a particular defendant required medical services." *Hubbard*, 404 Ill. App. 3d at 105.

Notwithstanding this authority, defendant cites *People v. Cleveland*, 393 Ill. App. 3d 700, 714 (2009), where this court held that the fee only applies when the individual arrestee actually incurs medical expenses. Defendant's reliance is fundamentally flawed because the author of the *Cleveland* opinion has expressly abrogated the holding in *Hubbard*, 404 Ill. App. 3d at 105. We therefore find no basis to depart from the reasoning expressed in the above cited cases, and affirm the assessment of the \$10 Medical Costs charge to defendant.

Defendant further contends, and the State concedes, that we should vacate the assessment of a \$25 Violent Crime Victims Assistance Fund fee under section 10(c) of the Code of Criminal Procedure (725 ILCS 240/10(c) (West 2006)), and, in its place, assess a \$4 fine under section 10(b). We agree with the parties that the fine should have been assessed under section 10(b) because penalties under section 10(c) should be assessed only when "no other fine is imposed." However, we disagree with the calculations provided by the parties.

The statute provides for the imposition of a \$4 penalty per \$40 of fines imposed (725 ILCS 240/10(b) (West 2006)). *People v.*

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Brown, 388 Ill. App. 3d 104, 114 (2009). As noted, defendant was assessed multiple fines including the \$1,000 DUI Subsequent Offense fine, the \$10 Mental Health Court fee (55 ILCS 5/5-1101(d-5) (West 2006)), and the \$5 Youth Diversion / Peer Court fee (55 ILCS 5/5-1101(e) (West 2006)). Although we agree that the \$25 fine imposed under section 10(c) was improper, we find that defendant was subject to a \$104 assessment under section 10(b), based upon fines totaling \$1,015. *Brown*, 388 Ill. App. 3d at 114.

Defendant finally contends, and the State agrees, that he is entitled to a \$5 per day credit toward the total amount of the fines for the 79 days he spent incarcerated prior to sentencing.

Section 110-14(a) of the Code of Criminal Procedure provides that "[a]ny person incarcerated on aailable 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 2006). Defendant was incarcerated for DUI, aailable offense, and he is entitled to credit toward the \$1,000 DUI Subsequent Offense fine (*People v. Diaz*, 377 Ill. App. 3d 339, 351 (2007)), the \$10 Mental Health Court fee (*Williams*, No. 1-09-1667, slip op. at 10), and the \$5 Youth Diversion fee (*Williams*, No. 1-09-1667, slip op. at 10). However, by mandate of the applicable statutes, defendant is not entitled to credit

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for the \$10 Arrestee's Medical Costs Fund (730 ILCS 125/17 (West 2006)), or the \$104 Violent Crime Victim Assistance penalty imposed under section 10(b) of the Code of Criminal Procedure ((725 ILCS 240/10(c) (West 2006))). Accordingly, we conclude that defendant is entitled to a \$395 credit to offset the \$1,015 in applicable assessed fines.

Defendant also urges us to remand his cause to allow the circuit court to enter a corrected order. We decline to do so and exercise our authority to order the clerk of the circuit court (*Brown*, 388 Ill. App. 3d at 115) to modify the fines and fees order by vacating the \$25 Violent Crime Victim Assistance charge under section 10(c), assessing a \$104 Violent Crime Victim Assistance charge under section 10(b), and applying \$395 in presentence credit. We affirm the judgment of the circuit court of Cook County in all other respects.

Affirmed, fines and fees order modified.