

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
JUNE 28, 2011

1-10-0787

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. 07 CR 25894 |
| |) | |
| ANTHONY JAMES, |) | Honorable |
| |) | Rickey Jones, |
| Defendant-Appellant. |) | Judge Presiding. |

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Karnezis and Connors concurred in the judgment.

ORDER

Held: Where defendant was properly assessed the \$10 arrestee's medical costs fund fee; the trial court's judgment was affirmed; where defendant was not properly assessed the \$30 children's advocacy assessment, the \$5 court system fee, and was entitled to pre-sentence incarceration credit to offset certain fines, his sentence was modified.

Following a bench trial, defendant Anthony James was convicted of possession of a controlled substance and sentenced to two years of imprisonment. On appeal, defendant raises no issue concerning the validity of his conviction or sentence, but solely challenges the imposition of several fines and fees.

Defendant first contends, and the State agrees, that he is entitled to a \$5 per day credit for the 37 days he spent in pre-sentence incarceration pursuant to section 110-14(a) of the Code of Criminal Procedure (725 ILCS 5/110-14(a) (West 2008)), for a monetary credit of \$185 against the \$500 controlled substance assessment (720 ILCS 570/411.2(i) (West 2008)). Consistent with *People v.*

Jones, 223 Ill. 2d 569, 592 (2006), we find that defendant's controlled substance assessment is subject to reduction by pre-sentence incarceration.

Second, defendant and the State correctly agree that the \$30 children's advocacy assessment constitutes a fine and must be vacated because it was not in effect until 2008, *i.e.*, after the subject crime was committed in 2007. The *ex post facto* clauses in the United States and Illinois Constitutions forbid retroactive application of a law that inflicts greater punishment than did the law that was in effect at the time the offense was committed. *People v. Cornelius*, 213 Ill. 2d 178, 207 (2004). The prohibition against *ex post facto* laws applies only to laws that are punitive in nature, such as fines, but does not apply to costs, which are compensatory. *People v. Bishop*, 354 Ill. App. 3d 549, 561-62 (2004). The \$30 children's advocacy fee constitutes a fine (*People v. McNeal*, 405 Ill. App. 3d 647, 680-81 (2010)) and was not effective until January 1, 2008 (55 ILCS 5/5-1101(f-5) (West 2008)). Accordingly, we vacate the children's advocacy assessment.

Third, defendant contends, and the State correctly agrees, that this court must vacate the \$5 court system fee (55 ILCS 5/5-1101(a) (West 2008)) because he was not convicted of a vehicular violation and the plain language of the statute shows that this fee may be imposed only for violations of provisions which are not at issue here. See *People v. Williams*, 394 Ill. App. 3d 480, 483 (2009) (finding the court system fee applies only to vehicle offenses and vacating its imposition where the defendant was convicted of being an armed habitual offender).

Defendant lastly contends that the \$10 arrestee's medical costs fund fee (730 ILCS 125/17 (West 2006)) was unauthorized because there was no evidence that he suffered any injury during his arrest or that Cook County incurred any expense relating to any medical treatment for him.

We initially note that this issue is currently pending in our supreme court in two consolidated cases. See *People v. Jackson*, No. 1-08-3464 (2010) (unpublished order under Supreme Court Rule 23), *appeal allowed*, No. 110615 (Sept. 29, 2010); *People v. Lee*, No. 1-09-0347 (2010) (unpublished order under Supreme Court Rule 23), *appeal allowed*, No. 110702 (Sept. 29, 2010)

(oral argument held May 10, 2011).

Section 17 of the County Jail Act, which authorizes the arrestee's medical costs fee, was amended effective August 15, 2008. See 730 ILCS 125/17 (West 2008) (amended by P.A. 95-842, § 5, eff. Aug. 15, 2008). Prior to its amendment, section 17 provided that money in the fund was to be used "for reimbursement of costs for medical expenses relating to the arrestee while he or she is in the custody of the sheriff and administration of the Fund." 730 ILCS 125/17 (West 2006). As amended, section 17 provides that money in the fund is to be used "for reimbursement to the county of costs for medical expenses and administration of the Fund." 730 ILCS 125/17 (West 2008).

This court has rejected defendant's interpretation of the pre-amended statute that the fee could not be assessed unless the particular defendant incurred medical expenses while he was in custody. See *People v. Unander*, 404 Ill. App. 3d 884, 889-90 (2010); *People v. Coleman*, 404 Ill. App. 3d 750, 754 (2010); *People v. Hubbard*, 404 Ill. App. 3d 100, 105-06 (2010); *People v. Evangelista*, 393 Ill. App. 3d 395, 400 (2009); *People v. Jones*, 397 Ill. App. 3d 651, 663 (2009).

Nevertheless, defendant relies on *People v. Cleveland*, 393 Ill. App. 3d 700, 714 (2009), which held that the fee only applies when the arrestee actually incurred medical expenses. Defendant's reliance is flawed because the author of the *Cleveland* opinion subsequently disagreed with its *Cleveland* holding on this issue in *Hubbard*. See *Hubbard*, 404 Ill. App. 3d at 105-06. Thus, we find defendant's argument to be unpersuasive.

Moreover, we conclude that under the amended statute defendant was properly assessed the \$10 arrestee's medical costs fund fee. The amended version provides that the fund may be spent on fund administration and "costs for medical expenses" (730 ILCS 125/17 (West 2008)). Thus, the amended version eliminated any link between the \$10 fee and the individual arrestee's medical expenses. This change undermines defendant's position that the fee was improper where he did not receive medical treatment as a result of his arrest or while he was in custody. See *Unander*, 404 Ill. App. 3d at 890 (finding, in *dicta*, that the amendment shows the legislature's intention that the fee

1-10-0787

be collected regardless of whether a defendant incurs any injury). After examining the pre-amendment statute, the amended statute, and the relevant case law, we conclude that the \$10 fee authorized by section 17 of the County Jail Act was properly imposed.

For the foregoing reasons, we vacate the \$30 children's advocacy assessment and the \$5 court system fee; find that defendant is entitled to a \$5 per-day custody credit against the \$500 controlled substance assessment; and affirm the judgment in all other respects.

Affirmed as modified.