

No. 1-09-2678

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).

FIFTH DIVISION
March 4, 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. 08 CR 21358
)	
ALBERT NUNLEY,)	Honorable
)	Carol A. Kipperman,
Defendant-Appellant.)	Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Joseph Gordon
concur in the judgment.

ORDER

Held: Where defendant was not properly assessed the \$20 preliminary examination fee, the \$5 court system fee, and the \$25 fine under Violent Crime Victims Assistance Act, and was entitled to pre-sentence incarceration credit to offset certain fines, his sentence was modified.

Following a bench trial, defendant Albert Nunley was convicted of burglary and theft and sentenced to 12 months'

probation. On appeal, defendant raises no issue concerning the validity of his conviction or sentence, but solely challenges the imposition of several fines and fees. Affirmed as modified.

The evidence at trial showed that on September 26, 2008, defendant and his codefendant, Keith Reed, who is not a party to this appeal, stole personal property from a van owned by Megan Knugh. Defendant was arrested for burglary and theft on the day of the incident and the charges were dropped on October 24, 2008. The State subsequently indicted defendant on the charges of burglary and theft in November 2008. In August 2009, trial was held and sentence was imposed on September 29, 2009.

Defendant first contends, and the State correctly agrees, that he was erroneously assessed a \$20 preliminary hearing fee because no preliminary hearing took place. See 55 ILCS 5/4-2002.1(a) (West 2008). Where, as here, no preliminary hearing takes place, a defendant need not pay the \$20 preliminary examination fee. See *People v. Smith*, 236 Ill. 2d 162, 174 (2010) (holding that where defendant did not receive a probable cause hearing, he cannot be assessed a preliminary examination fee).

Second, defendant contends that this court should vacate the \$25 court services assessment (55 ILCS 5/5-1103 (West 2008)) because it applies only to certain types of criminal convictions, which are not applicable to the case at bar. The State, however,

contends that a plain reading of the statute indicates that the charge applies to *all* criminal cases. We agree with the State.

Section 5-1103 provides, in pertinent part, that:

"In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction, or order of supervision, or sentence of probation without entry of judgment pursuant to [certain enumerated criminal statutes]." 55 ILCS 5/5-1103 (West 2008).

Contrary to defendant's argument, a plain reading of this statute does in fact indicate that the charge applies to *all* judgments of conviction. See *People v. Williams*, No. 1-09-1667, slip op. at 10-11 (Ill. App. Dec. 2, 2010) (indicating that the court services fee is mandatory upon finding of guilt). Here, that section applies because defendant was convicted of burglary and theft following a bench trial and was subsequently sentenced to 12 months' probation. Therefore, defendant's \$25 court services fee is affirmed.

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).

Fourth, defendant contends that the trial court erred in imposing a \$25 fine under section 10(c)(1) of the Violent Crime Victims Assistance Act (Act) (725 ILCS 240/10(c)(1) (West 2008)). Instead, defendant maintains, and the State agrees, that a \$8 fine should be imposed under section 10(b) of the Act (725 ILCS 240/10(b) (West 2008)). We agree with that assessment.

Section 10 of the Act allows the trial court to assess a penalty against a defendant in support of a fund for victims of violent crime. 725 ILCS 240/10 (West 2008). However, subsection (c) of this Act applies only where no other fine is imposed. 725 ILCS 240/10(c) (West 2008). Where another fine has been imposed, the proper fine is calculated under subsection (b) of the Act, which allows for an assessment of \$4 for each \$40, or fraction thereof, of fines imposed against the defendant. 725 ILCS 240/10(b) (West 2008).

Here, the trial court imposed undisputed fines totaling \$50: a \$10 mental health court fine, a \$5 youth diversion fine, a \$5

drug court fine, and a \$30 children's advocacy assessment. 55 ILCS 5/5-1101(d-5), (e), (f), (f-5) (West 2008). In his reply brief, defendant also argues that the \$10 arrestee's medical cost assessment should be included as a fine. Whether or not the total amount of the fines is \$50, as conceded by the State, or \$60, including the \$10 medical cost assessment, the result is the same under section 10(b) which only authorizes \$4 for each \$40 assessment. Accordingly for an aggregate total of \$50 or \$60 in fines, defendant should have been fined only \$8.

Finally, defendant claims he was in custody for 29 days, *i.e.*, from the date of his arrest on September 26, 2008, through October 24, 2008, the date on which defendant's charges were initially dropped. Thus defendant contends that he is entitled to a \$5 per day credit (\$145) against his fines.

The State agrees that a defendant is entitled to a \$5 credit to offset fines for each day that he is incarcerated on a bailable offense prior to sentencing. 725 ILCS 5/110-14 (West 2008). However, the State maintains that defendant has not established that he was actually in custody for 29 days.

We find that the record supports defendant's position. On September 26, 2008, defendant was arrested and held at the Broadview lockup. The four-page document from the Clerk of the Circuit Court reveals that on September 27, 2008, the bail amount was set at \$10,000. The "Cook County Sheriff's Office Booking

Card" for September 27, 2008, shows defendant's "bond written" at \$0. Nonpayment of the bond was verified by defendant when he told the court during the November 25, 2008, hearing that he did not post bond before. The "Cook County Sheriff's Office Inmate Housing History" shows defendant's cell numbers on dates between September 27, 2008, and October 24, 2008. There is no dispute that the charges against defendant were initially dropped on October 24, 2008. Accordingly, we find that the record adequately demonstrates that defendant was in custody for 29 days (September 26 through October 24, 2008) and is entitled to \$145 credit against his fines.

Here, the fines imposed against defendant included a \$10 mental health court fine, a \$5 youth diversion fine, a \$5 drug court fine, and a \$30 children's advocacy assessment. 55 ILCS 5/5-1101(d-5), (e), (f), (f-5) (West 2008). Because fines are subject to reduction (*People v. Jones*, 223 Ill. 2d 569, 587-599 (2006)), defendant is entitled to a pre-sentence incarceration credit to offset them. However, contrary to defendant's assertions, the \$10 arrestee's medical charge (730 ILCS 125/17 (West 2008)) is not subject to offset by his \$5 per day credit under section 110-14(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (2008)). Section 17 of the County Jail Act specifically holds that the arrestee's medical charge "shall not be considered a part of the fine for purposes of any reduction in

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the fine." 730 ILCS 125/17 (West 2008). See *People v. Unander*, 404 Ill. App. 3d 884, 890 (holding that defendant was not entitled to apply his available credit against the arrestee's medical charge).

For the foregoing reasons, we vacate the \$20 preliminary examination fee, the \$5 court system fee, and the \$25 fine pursuant to section 10(c)(1) of the Act; impose an \$8 fine pursuant to section 10(b) of the Act; and find that defendant is entitled to a \$5 per day custody credit to offset the \$10 mental health court fine, the \$5 youth diversion fine, the \$5 drug court fine, and the \$30 children's advocacy assessment. We affirm the judgment of the trial court in all other respects.

Affirmed as modified.