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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 5137
)	
TYTEANNA WILLIAMS,)	Honorable
)	Catherine M. Haberkorn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶1 *Held:* Where defendant was assessed the incorrect court system fee, the erroneous \$5 fee was vacated and the correct \$50 fee was imposed. Also, defendant was not eligible for a \$5-per-day credit against her \$200 DNA ID system fee because the assessment is a "fee" rather than a "fine."

¶2 Following a fully negotiated guilty plea, defendant, Tyteanna Williams, was convicted of two counts of aggravated battery of a peace officer and sentenced to two-years' probation. The trial court also assessed defendant various court costs and fees totaling \$555. Defendant subsequently pled guilty to violating her probation and was sentenced to an agreed-upon term of four and a half years' imprisonment. On appeal, defendant does not challenge her conviction, sentence, or the voluntariness of her plea, but instead contends she was erroneously assessed a \$5 court system fee. Defendant also contends she is entitled to have her \$200 DNA ID system fee offset by presentence

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credit because the charge is a "fine" rather than a "fee." We replace the \$5 court system fee with a \$50 court system fee, and affirm defendant's conviction and sentence in all other respects.

¶ 3 Because defendant does not contest the sufficiency of the evidence to sustain her conviction, a detailed discussion of the facts of this case is unnecessary. The factual basis presented at her guilty-plea hearing established that, on February 25, 2008, defendant was in her high school's dean's office when she began yelling obscenities and pushing items off desks. Chicago Police Officers Beam and Ranieri, assigned to the school, attempted to subdue defendant. Defendant then began fighting with the officers, kicking them several times and biting Officer Beam's hand, breaking his skin.

¶ 4 On appeal, the parties agree defendant was erroneously assessed a \$5 court system fee under section 5-1101(a) of the Counties Code (the Code) (55 ILCS 5/5-1101(a) (West 2008)) because her aggravated battery conviction is not related to the Illinois Vehicle Code or a similar municipal ordinance. The parties further agree, however, that defendant should have been assessed a \$50 court system fee under section 5-1101(c)(1) of the Code (55 ILCS 5/5-1101(c)(1) (West 2008)) for being found guilty of a felony offense. See *People v. Willis*, 402 Ill. App. 3d 47, 62 (2010). Accordingly, we vacate the \$5 court system fee under section 5-1101(a) from the fines, fees and costs order and assess defendant the \$50 court system fee under section 5-1101(c)(1). Pursuant to our authority (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999)), we direct the clerk of the circuit court to amend the fines, fees and costs order to reflect these changes.

¶ 5 Defendant next contends that she is entitled to have her \$200 DNA ID system fee offset by presentence incarceration credit of \$5 per day because the charge is a "fine" rather than a "fee." Defendant argues that the DNA assessment must be considered a fine because it is not used to compensate the State for the actual cost of prosecuting criminal defendants. She further notes the charge is imposed only after a defendant is convicted, and that the majority of the assessment goes to the Illinois State Police laboratories for DNA analysis and maintenance of the DNA database.

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¶ 6 Defendant acknowledges that a split of authority exists among the districts of the appellate court as to whether or not the DNA assessment is a "fine" or a "fee." She further acknowledges this district has held that the DNA assessment is a fee and, thus, not subject to the presentence credit. She urges this court to depart from our prior holdings, and instead to follow the rulings of the Second and Fourth Districts which have held that the assessment is a fine, and have applied presentence credit to the charge. This issue is currently pending resolution by our supreme court in *People v. Johnson*, No. 111817.¹

¶ 7 Pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963, defendant is allowed a credit of \$5 for each day she was in custody prior to being sentenced which may be applied against her fines. 725 ILCS 5/110-14 (a) (West 2008); *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). Our supreme court has held: "a 'fine' is part of the punishment for a conviction whereas a 'fee' or 'costs' seeks to recoup expenses incurred by the state to 'compensate' the State for some expenditure incurred in prosecuting the defendant." *People v. Jones*, 223 Ill. 2d 569, 582 (2006); see also *People v. Graves*, 235 Ill. 2d 244, 250 (2009).

¶ 8 This district has consistently found that the purpose of the \$200 DNA assessment is to compensate the State for its costs in collecting and analyzing DNA samples from convicted defendants, and that the charge is a collateral consequence of a defendant's prosecution and conviction. *People v. Anthony*, 408 Ill. App. 3d 799, 808-09 (2011); *People v. Williams*, 405 Ill. App. 3d 958, 966 (2010); *Tolliver*, 363 Ill. App. 3d at 97. Consequently, we have held that the DNA assessment is a fee, not a fine, and is not subject to the presentence credit. *Anthony*, 408 Ill. App. 3d at 809; *Williams*, 405 Ill. App. 3d at 966; *Tolliver*, 363 Ill. App. 3d at 97. *Contra*, *People v. Clark*, 404 Ill. App. 3d 141, 143 (2nd Dist. 2010); *People v. Mingo*, 403 Ill. App. 3d 968, 973 (2nd Dist. 2010); *People v. Long*, 398 Ill. App. 3d 1028, 1034-35 (4th Dist. 2010).

¶ 9 Here, we decline to depart from the reasoning in our prior decisions and continue to hold that

¹Our supreme court held oral arguments for *Johnson* on September 15, 2011.

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the \$200 DNA ID system fee is not a fine, but instead is a fee that compensates the State for the costs of DNA analysis following defendant's prosecution and conviction. Accordingly, defendant is not entitled to apply the presentence incarceration credit against that assessment.

¶ 10 For these reasons, we vacate the \$5 court system fee, assess defendant the \$50 court system fee, and affirm defendant's conviction and sentence in all other respects.

¶ 11 Affirmed as modified.