

No. 1-11-0090

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).

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 16160
)	
THEO WRIGHT,)	Honorable
)	Larry Axelrod,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Quinn and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Defendant's mittimus should be corrected to reflect a single conviction for second degree murder, (2) the court system and Children's Advocacy Center fees must be vacated, and (3) the court services fee was properly assessed.

¶ 2 Following a bench trial, defendant Theo Wright was convicted of second degree murder and three counts of aggravated discharge of a firearm. On appeal, defendant contends that we should correct his mittimus and modify the fees, fines and costs order.

¶ 3 Evidence at trial showed that defendant shot and killed Darryl Shannon Pickett and shot at Pickett's brother and two associates during a fight between two groups of men in Evanston on June 28, 2007. After finding him guilty, the court imposed a 10-year prison term for the second degree murder of Pickett and three concurrent 5-year terms for three counts of aggravated discharge of a firearm, to be served consecutive to the 10-year term for a total of 15 years. Defendant was additionally assessed various fees and fines. Defendant now appeals, seeking review of his mittimus and some of the fines and fees imposed.

¶ 4 Defendant first contends, and the State correctly agrees, that his mittimus must be corrected because it erroneously reflects two convictions of second degree murder and two concurrent sentences of 10 years. Where, as here, there is one decedent, only one murder conviction can stand. *People v. Kuntu*, 196 Ill. 2d 105, 130 (2001). Accordingly, we modify defendant's mittimus to reflect one conviction of second degree murder and one 10-year sentence.

¶ 5 Second, defendant contends, and the State rightly concedes, that we should vacate the \$5 court system fee because it only applies as a result of a violation of the Illinois Vehicle Code. 55 ILCS 5/5-1101(a) (West 2006); *See People v. Cleveland*, 393 Ill. App. 3d 700, 714 (2009). Here, defendant was not found guilty under the Illinois Vehicle Code. Thus, section 5-1101(a) does not apply, and we vacate the \$5 court system fee.

¶ 6 Third, the parties correctly agree that we must vacate the \$30 Children's Advocacy Center charge (55 ILCS 5/5-1101(f-5)(West 2008)) because it is a punitive "fine," and not a "fee." *People v. Jones*, 223 Ill. 2d 569, 581-582 (2006). This fine, which became effective on January 1, 2008, was not in effect at the time of the present crimes in June 2007, and therefore violates the *ex post facto* clause of the U.S. Constitution. *People v. Cornelius*, 213 Ill. 2d 178, 207 (2004).

¶ 7 Defendant next contends that we should vacate the \$25 court services fee because the fee applies only to specific offenses enumerated in the relevant statute.

¶ 8 Illinois law provides that a fee may be assessed against a defendant in a criminal proceeding upon a finding of guilty or conviction to defray court security costs in criminal prosecutions. 55 ILCS 5/5-1103 (West 2006). Section 5-1103 also provides that fees may be assessed against defendants in certain cases where there is a sentence of probation but no entry of judgment. *Id.* Defendant mistakenly relies upon this latter portion of section 5-1103, which outlines the specific enumerated offenses where fees can be assessed in the absence of an entry of judgment. Here, however, because defendant was found guilty and convicted of criminal offenses, the \$25 court services fee applies under section 5-1103.

¶ 9 For the foregoing reasons, we vacate defendant's \$5 court system fee and \$30 Children's Advocacy Center fee, correct defendant's mittimus and affirm the judgment of the trial court in all other respects.

¶ 10 Affirmed; mittimus corrected; fines and fees order corrected.