

2012 IL App (2d) 100644-U
No. 2-10-0644
Order filed June 29, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07-CF-277
)	
JOEL BUIE,)	Honorable
)	John J. Kinsella,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

Held: Postconviction counsel was not ineffective for failing to attach police reports to the amended postconviction petition. Postconviction counsel complied with the Supreme Court Rule requirements. Defendant's Drug Court-Mental Health Court charge is a fine, for which he is subject to offset and one of defendant's two \$125 Clerk's fees is vacated. Other various fines and fees assessed to defendant were determined correctly. We affirmed as modified in part and vacated in part.

¶ 1 Defendant, Joel Buie, appeals the trial court's dismissal of his second-stage postconviction petition. Defendant contends that (1) his postconviction counsel was ineffective pursuant to Illinois

Supreme Court Rule 651(c) (eff. Dec. 1, 1984); and (2) various fines, fees, and costs assessed to him should be vacated or found satisfied. We affirm as modified.

¶ 2 On January 31, 2007, the State filed a single complaint against defendant. Defendant was later charged by indictment with one count of robbery, two counts of aggravated robbery, and one count of burglary stemming from an incident which took place on January 30, 2007, at a Shell gas station in Wheaton. Following a bench trial, defendant was found guilty of aggravated robbery and burglary and was sentenced to concurrent seven and four year terms of imprisonment, respectively, and ordered to pay \$200 for DNA analysis, “statutory court costs on each count,” and “no fines.” On appeal, we affirmed defendant’s conviction and sentence with a modification and partial vacation of particular fines and fees. See *People v. Buie*, No. 2-07-1021 (2007) (unpublished order under Supreme Court Rule 23). Defendant filed a timely *pro se* postconviction petition. The trial court appointed counsel and counsel filed an amended petition. The State filed a motion to dismiss defendant’s petition, which the trial court granted. Defendant timely appeals.

¶ 3 At defendant’s bench trial, the State presented the testimony of the victim, Mohammed Jahangir and Wheaton police officer Matthew Hale. Jahangir testified that on January 30, 2007, he was working the night shift as a security guard at a FedEx warehouse in Wheaton. Jahangir took his break and drove to a Shell gas station. Jahangir testified that when he walked into the gas station, he noticed defendant talking to the clerk. Jahangir testified that after leaving the store, defendant began speaking with him. Jahangir testified that when he got into his car, defendant, without permission, entered the passenger side of the vehicle. Jahangir told defendant to exit the vehicle, but defendant ignored the request and began speaking. Jahangir testified that defendant acted friendly, but told him to hand over the money he had displayed earlier. Jahangir refused. Jahangir

testified that defendant stuck his hand in his pocket and gestured like he had a gun. Jahangir told defendant to get out of the car, but defendant again refused and then told Jahangir to give him the money or he would shoot him. Jahangir testified that he “threw” \$120 at defendant and told him to take it. Defendant handed Jahangir back \$20 and told Jahangir that he would pay him back after he “got paid.” Defendant wrote his name and phone number on the cover of one of Jahangir’s magazines and again informed Jahangir that he would pay him back. After defendant drove away, Jahangir returned to the gas station, told the clerk he had just been robbed, and asked the clerk to call the police.

¶ 4 Wheaton police officer Matthew Hale testified that on January 30, 2007, he responded to a report of a robbery. Hale testified that defendant was arrested and searched. Upon searching defendant, Hale found five \$20 bills. The parties stipulated that, if called as a witness, Wheaton police officer Zdan would testify that he interviewed Jahangir after the incident. He would testify that Jahangir told him that after defendant took \$100 from him, he followed defendant’s vehicle when it drove away, copied the license plate number, drove back to the gas station where the incident transpired and attempted to call the phone number given to him by defendant.

¶ 5 Defendant testified on his own behalf. According to defendant, conversation between himself and Jahangir first arose outside the gas station because Jahangir was attempting to purchase marijuana. Defendant testified that Jahangir gave him \$100 and then exited the vehicle after the men exchanged phone numbers. According to defendant, he spoke to the clerk about his encounter with Jahangir, including that Jahangir “wanted to buy weed.” Defendant testified that he later drove to a White Hen Pantry and asked Marcus Johnson, a man he had never met before, if he knew where

he could buy some marijuana. Thereafter, defendant and Marcus Johnson were arrested in the parking lot.

¶ 6 The trial court found defendant guilty on all four counts. Defendant subsequently filed a motion for a new trial, alleging that he was not proved guilty beyond a reasonable doubt, which the trial court denied. The trial court merged Count I (robbery) and Count II (aggravated robbery) with Count III (aggravated robbery predicated on the defendant indicating that he had a firearm). The trial court sentenced defendant to concurrent seven and four year prison terms. The trial court also ordered defendant to pay a \$200 DNA analysis fee, costs on each count and “no fines.” The trial court denied defendant’s motion to reconsider.

¶ 7 On direct appeal, defendant challenged various fines and fees assessed by the clerk of the court, including the two Drug Court-Mental Health Court assessments and the two Arrestees’ Medical Cost Fund fees. See *Buie*, No. 2-07-1021 (2007) (unpublished order under Supreme Court Rule 23). We affirmed defendant’s convictions and sentences, as modified. *Id.*

¶ 8 On October 15, 2009, defendant filed a *pro se* postconviction petition alleging that trial counsel was ineffective for failing to call two trial witnesses and for failing to enter video, rather than still photos, of Jahangir and him at the Shell station. The petition further alleged ineffective assistance of appellate counsel for failing to allege ineffective assistance of trial counsel on direct appeal. The trial court found that defendant presented the gist of a constitutional claim and appointed counsel to represent defendant in second-stage postconviction proceedings.

¶ 9 On March, 30, 2010, counsel appointed to represent defendant on second-stage postconviction review filed an amended petition along with a Supreme Court Rule 651(c) certificate. The amended postconviction petition alleged that defendant received ineffective assistance of

counsel at trial because counsel failed to: (a) call Joseph Bailey, the clerk from the Shell gas station, and Marcus Johnson, the man from the White Hen parking lot, as witnesses; (b) introduce video surveillance evidence from the Shell station and; (c) call Wheaton police detective Zdan as a witness rather than stipulating to his testimony.

¶ 10 In defendant's amended postconviction petition, counsel attached six exhibits, transcript pages from the trial, orders of the court, defendant's affidavit, and her personal affidavit. In her personal affidavit, postconviction counsel summarized expected testimony from both witnesses. She averred that Bailey would have testified that he observed defendant and Jahangir talking in the parking lot and entering Jahangir's car; Bailey then observed defendant exiting Jahangir's car and Jahangir driving away. According to postconviction counsel, Bailey would further testify that he and defendant spoke when defendant entered the store to receive his change. Postconviction counsel further averred that Johnson would testify that he had not previously met defendant and that he and defendant had a conversation about marijuana on the evening of the alleged incident. In her affidavit, postconviction counsel described her unsuccessful efforts to locate Bailey and Johnson "to confirm what was contained in the police reports."

¶ 11 The State filed a motion to dismiss, asserting that defendant failed to make a substantial showing of ineffective assistance of trial counsel because his petition did not contain affidavits from the proposed witnesses. The State further argued that trial counsel's decision to enter photographs of the Shell station instead of video and to enter into a stipulation regarding Zdan's testimony were matters of trial strategy, and therefore, did not constitute the ineffective assistance of counsel at trial.

¶ 12 At a hearing on the State's motion to dismiss, in response to questions by the trial court regarding the absence of affidavits from Bailey and Johnson, postconviction counsel cited her own

affidavit detailing her efforts to locate Bailey and Johnson and “indicating what I believe their purported testimony would be based on the police reports.” Postconviction counsel argued that the testimony of Bailey and Johnson may have altered the results of the trial and that defendant was prejudiced by counsel’s failure call to them as witnesses. The trial court disagreed, finding Bailey’s and Johnson’s expected testimony would have corroborated defendant’s version of the facts and placed an “innocent spin” on his encounter with Jahangir. The trial court concluded that, based on the nature and circumstances of defendant’s encounter with Jahangir, there was no substantial likelihood that Bailey’s and Johnson’s testimony would have affected the outcome of the case. The trial court granted the State’s motion to dismiss defendant’s amended postconviction petition. On June 17, 2010, defendant timely appealed.

¶ 13 Defendant first alleges ineffective assistance of postconviction counsel. He contends that the trial court erred when it dismissed his second-stage postconviction petition. He argues that his postconviction claim of ineffective assistance of trial counsel was not properly presented by postconviction counsel because she failed to amend his postconviction petition with supporting police reports. Defendant argues that postconviction counsel’s failure to append police reports to his postconviction petition fell below the reasonable level of assistance contemplated by Supreme Court Rule 651(c). Defendant asserts that we must reverse the second-stage dismissal of his postconviction petition and remand the case with directions that the trial court allow him to re-plead his postconviction petition with the reasonable assistance of counsel.

¶ 14 The Post-Conviction Hearing Act (the Act) provides a method by which persons under criminal sentence can assert that their convictions were the result of a substantial denial of their rights under the United States or the Illinois Constitution or both. 725 ILCS 5/122-1 *et seq.* (West

2008); *People v. Ligon*, 239 Ill. 2d 94, 103 (2010) (citing *People v. Petrenko*, 237 Ill. 2d 490, 495-96 (2010)). A postconviction proceeding is a collateral attack on the prior conviction or sentence that does not relitigate a defendant's innocence or guilt. *Ligon*, 239 Ill. 2d at 103 (citing *People v. Evans*, 186 Ill. 2d 83, 89 (1999)).

¶ 15 Proceedings under the Act are commenced by the filing of a petition in the circuit court in which the original proceeding took place. *People v. Hansen*, 2011 IL App (2d) 081226, ¶ 18 (2011) (citing *People v. Jones*, 213 Ill. 2d 498, 503 (2004)). A postconviction proceeding that does not involve the death penalty consists of three stages. At the first stage, the defendant files a petition and the trial court has 90 days in which it may review the petition without the input of any party and summarily dismiss it if the court finds it frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2) (West 2008); *Hansen*, 2011 IL App (2d) 081226, ¶ 18 (citing *People v. Jones*, 211 Ill. 2d 140, 144 (2004)). To survive summary dismissal, the petition must present only the gist of a constitutional claim. *People v. Hodges*, 234 Ill. 2d 1, 9 (2009); *Hansen*, 2011 IL App (2d) 081226, ¶ 18 (citing *Jones*, 211 Ill. 2d at 144).

¶ 16 At the second stage, counsel may be appointed for defendant, if defendant is indigent. 725 ILCS 5/122-4 (West 2008); *People v. Pendleton*, 223 Ill. 2d 458, 472 (2006). After an appointment, Illinois Supreme Court Rule 651(c) (eff. Dec. 1, 1984) requires the appointed counsel: (1) to consult with petitioner by mail or in person; (2) to examine the record of the challenged proceedings; and (3) to make any amendments that are "necessary" to the petition previously filed by the *pro se* defendant. *People v. Perkins*, 229 Ill. 2d 34, 42 (2007).

¶ 17 The Act further provides that, after defense counsel has made any necessary amendments to the petition, the State may move to dismiss it. *Pendleton*, 223 Ill. 2d at 472 (discussing 725 ILCS

5/122-5 (West 2000)); see also *Perkins*, 229 Ill. 2d at 43. If the State moves to dismiss, the trial court may hold a dismissal hearing, which is still part of the second stage. *People v. Coleman*, 183 Ill. 2d 366, 380-81 (1998). A trial court is foreclosed “from engaging in any fact-finding at a dismissal hearing because all well-pleaded facts are to be taken as true at this point in the proceeding.” *Coleman*, 183 Ill. 2d at 380-81. A court reviewing a dismissal of a postconviction petition without an evidentiary hearing will do so *de novo*. *People v. Edwards*, 195 Ill. 2d 142, 156 (2001) (citing *Coleman*, 183 Ill. 2d at 389). In the present case, the trial court dismissed defendant’s petition at the second stage; therefore, our review is *de novo*.

¶ 18 To proceed beyond the second stage of proceedings under the Act, a defendant must make a substantial showing of a constitutional violation. *Pendleton*, 223 Ill. 2d at 473. Only upon a substantial showing of a constitutional violation is a defendant entitled to a third-stage evidentiary hearing. See *People v. Spreitzer*, 143 Ill. 2d 210, 218 (1991) (a defendant is not entitled to an evidentiary hearing unless the allegations in his postconviction petition, supported by the trial record and the accompanying affidavits, make a substantial showing that his constitutional rights were violated).

¶ 19 Our supreme court has repeatedly held that postconviction counsel must perform specific duties in his or her representation as provided by Rule 651(c) (eff. Dec. 1, 1984). *People v. Greer*, 212 Ill. 2d 192, 204-05 (2004). This rule requires that counsel meet with defendant to ascertain contentions of error and amend, if necessary, the *pro se* petition so as to adequately present those issues. Though these requirements do not obligate counsel to advance frivolous or spurious claims (*Greer*, 212 Ill. 2d at 205), a defendant is entitled to a “ ‘reasonable’ ” level of assistance of postconviction counsel (*Perkins*, 229 Ill. 2d at 42 (quoting *Pendleton*, 223 Ill. 2d at 472)).

¶ 20 In the present matter, defendant’s claim of ineffective assistance of postconviction counsel pertains to counsel’s failure to comply with the third requirement of Supreme Court Rule 651(c). Specifically, for adequate presentation of the petition, counsel was required to attach available “affidavits, records, or other evidence supporting its allegations” or explain the reason for an absence of these documents. 725 ILCS 5/122-2 (West 2008). Defendant asserts that, in the present matter, counsel’s failure to append supporting, available, and previously unreviewed police reports to the amended petition was unreasonable.

¶ 21 We determine that postconviction counsel complied with Supreme Court Rule 651. Here, postconviction counsel summarized testimony expected from both witnesses, both of whom were unable to be located after diligent efforts. Postconviction counsel averred that she believed Bailey would testify that he observed defendant speaking with Jahangir before entering and exiting his car and that Bailey spoke to defendant when defendant entered the store. She averred that she believed that Johnson would testify that he had not previously met defendant and that he and defendant had a conversation about marijuana on the evening of the alleged incident. In her affidavit, postconviction counsel described her unsuccessful efforts, including calling all known phone numbers of the potential witnesses and locating additional phone numbers of the potential witnesses through informational internet searches, to locate Bailey and Johnson “to confirm what was contained in the police reports.” See *People v. Waldrop*, 353 Ill. App. 3d 244, 251 (2004) (“When ruling on a motion to dismiss not supported by witness affidavit, a trial court may reasonably presume that postconviction counsel made a concerted effort to obtain affidavits in support of the claims despite being unable to do so.”).

¶ 22 In the current matter, postconviction counsel explained the reason for the absence of Bailey's and Johnson's affidavits in her own affidavit chronicling her diligent efforts to locate the witnesses. The police reports were an ancillary, investigative tool that postconviction counsel used in her attempt to locate Bailey and Johnson. Postconviction counsel complied with Supreme Court Rule 651(c) in that she "explain[ed] the reason for an absence of these documents" in her attached affidavit. See 725 ILCS 5/122-2 (West 2008).

¶ 23 Defendant argues that, according to *People v. Johnson*, 154 Ill. 2d 227, 245 (1993), "at minimum, postconviction counsel had an obligation to obtain evidentiary support for claims raised in the postconviction petition." *Johnson*, however, is distinguishable from the present matter. In *Johnson*, the defendant's *pro se* postconviction petition specifically identified witnesses and documents supporting allegations raised in the petition. Two years after the *pro se* petition was filed, petitioner's counsel filed an amended petition for postconviction relief. The amended petition re-alleged, verbatim, every allegation in the *pro se* petition and added two additional claims. The amended petition, however, was not accompanied by any affidavits or supporting documents. Noting that counsel had made no effort to contact the witnesses identified in the *pro se* petition, or to append affidavits of such witnesses, our supreme court concluded that counsel failed to adequately comply with Rule 651(c). The court stated, "because the allegations in the defendant's petition were not supported by affidavits, records, or other evidence, the trial court had no choice but to dismiss the postconviction petition." *Johnson*, 154 Ill. 2d at 243-45.

¶ 24 Unlike *Johnson*, in the present matter, postconviction counsel made a diligent effort to contact the witnesses identified in defendant's *pro se* petition. Defendant's amended postconviction claim that trial counsel was ineffective was supported by other evidence, namely, postconviction

counsel's explanation that she expected, based on police reports, that Bailey would testify about his observations of defendant and Jahangir's interactions at the convenience store and Johnson would testify that he and defendant spoke about marijuana on the evening of the incident.

¶ 25 Defendant also argues that *People v. Turner*, 187 Ill. 2d 406 (1999), is applicable to the present matter. We disagree. In *Turner*, our supreme court noted that if the defendant's counsel had amended the petition to allege ineffective assistance of appellate counsel for failing to raise claims on direct appeal, those claims would not have been barred. The supreme court also held that postconviction counsel's performance under Rule 651(c) was unreasonable because "counsel failed to make a routine amendment to the postconviction petition which would have overcome the procedural bar of waiver." *Id.* at 414. In the current matter, postconviction counsel investigated defendant's claims and attempted to find the witnesses to corroborate the claims. Her amended postconviction petition on defendant's behalf did not leave defendant's allegations open to waiver. Because we determine that postconviction counsel complied with the language of Supreme Court Rule 651(c), we determine that postconviction counsel gave reasonable assistance.

¶ 26 Defendant next contends that the trial court improperly imposed various fines and fees against him. Specifically, he argues that (1) the DNA analysis charge was subject to offset pursuant to section 110-14 of the Code of Criminal Procedure (the Code) (725 ILCS 5/110-14 (West 2006)); (2) the trial court lacked the authority to impose Drug Court-Mental Health Court charges and, alternatively, those charges were subject to offset; (3) the Court Automation and Document Storage fee should have been assessed one time per case; (4) the \$125 clerk's fee should have been assessed only one time per case; (5) the Court Security-Services fee should have been assessed only one time

per case; (6) the two \$10 County Jail Medical Cost Fund fees were improperly assessed where he suffered no injury; and (7) the Compliance Vendor fee-Collection fee must be recalculated.

¶ 27 The propriety of a trial court's imposition of fines and fees raises a question of statutory interpretation and is reviewed *de novo*. *People v. Anthony*, 408 Ill. App. 3d 799, 806 (2011). Defendant appeals from the order dismissing his amended postconviction petition. Although he did not raise these issues in the trial court, and did not raise these issues on direct appeal, whether a sentence is authorized by statute or a defendant is entitled to presentence credit against a fine, is not subject to forfeiture and may be raised at any time. See *People v. Thompson*, 209 Ill. 2d 19, 24 (2004) (holding that a sentence not authorized by statute is void and can be attacked at any time and in any court); *People v. Woodard*, 175 Ill. 2d 435, 457 (1997).

¶ 28 Defendant first argues that the DNA analysis charge was subject to offset pursuant to section 110-14 of the Code. 725 ILCS 5/110-14 (West 2006). Specifically, defendant argues that the assessment should be satisfied by a five-dollar-per-day credit towards fines for time spent in custody prior to sentencing. Section 110-14 of the Code, provides that criminal defendants incarcerated on bailable offenses who do not supply bail are entitled to a credit of five dollars toward their fines for each day of incarceration. 725 ILCS 5/110-14 (West 2006). The State responds that the DNA analysis charge is a fee and not a fine, and therefore, is not subject to the offset.

¶ 29 We agree with the State. Our supreme court recently determined that the DNA analysis fee is truly a fee, and because it is not a fine, it is not subject to offset by any credit for the time served in custody before sentencing. *People v. Guadarrama*, 2011 Il. App. 2d 100072. Thus, we determine that defendant is not entitled to an offset on his DNA analysis charge.

¶ 30 Defendant's second argument is that the trial court lacked the authority to impose Drug Court-Mental Health Court charges or, alternatively, that those charges were subject to an offset. Although the State argues that the trial court was authorized to impose these charges, it confesses error and acknowledges that the charges were subject to an offset. Here, it is well settled that Drug Court-Mental Health Court charges enabled by section 5-1101 (d-5) of the Code, 55 ILCS 5/5-1101 (d-5) are fines. Although labeled "fees," they are actually fines, which are punitive in nature and subject to monetary offset pursuant to section 114-10 of the Code. 725 ILCS 5/114-10 (West 2006); *People v. Graves*, 235 Ill. 2d 244, 255 (2009); *People v. Maldonado*, 402 Ill. App. 3d 411,439 (2010). Section 110-14(a) of the Code provides: "Any 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). The defendant is entitled to the credit for each day or part of a day spent in jail prior to the imposition of the sentence. *People v. McCreary*, 393 Ill. App. 3d 402, 408 (2009). By our calculations, defendant spent 189 days in custody before the imposition of his sentence. At a rate of \$5 per day; defendant's fine is offset. Thus, we determine that defendant's Drug Court-Mental Health Court charges are satisfied.

¶ 31 Defendant's third argument is that the Court Automation and Document Storage fee should have been assessed one time per case. The State argues that it was proper to assess one fee for each conviction. The Court Automation fee is authorized by Du Page County Code section 9-302 and requires that a \$15 fee "[S]hall be paid *** by the defendant on any felony, misdemeanor, traffic, ordinance, or conservation *matter* on a judgment of guilty *** [emphasis added]." Its stated purpose is to "defray the expense of the court automation systems and to convert the records of the circuit

court clerk to electronic automation.” Du Page County Code, Art. IV, Sec. 9-30 (West 2006). The document Storage fee is authorized by Du Page County Code section 9-10 and provides that a \$15 fee “[S]hall be paid *** by the defendant in any felony, misdemeanor, traffic, ordinance, or conservation *matter* on a judgment of guilty *** [emphasis added].” Its stated purpose is to “defray the expense of a document storage system and convert the records of the circuit court clerk to electronic micrographic storage.” Du Page County Code, Art. II, Sec. 9-10 (West 2006).

¶ 32 We agree with the State. The first rule of statutory construction is to ascertain and give effect to the legislature’s intent. *People v. Roland*, 351 Ill. App. 3d 1012, 1015 (2004). The best indicator of the legislature’s intent is the language of the legislation; such language should be accorded its plain or ordinary and popularly understood meaning. *Id.* All parts of the legislation should be considered as a whole. *People v. Smith*, 345 Ill. App. 3d 179, 185 (2004). In determining the legislature’s intent, a court should also consider the reason the law was enacted, the problems it is intended to remedy, and the objects and purposes sought with its enactment. *Id.* Here, the language is clear. Each judgment of guilty requires the assessment of a \$15 fee. Because the purpose of the legislation is to reimburse the County for expenses incurred storing and converting paperwork, and the amount of paperwork increases as the number of convictions increases, it is logical that the County should be reimbursed to a larger extent when it must store and convert paperwork for multiple convictions.

¶ 33 Defendant’s fourth argument is that the \$125 clerk’s fee should have been assessed only one time per case. The State responds that a \$125 was properly assessed on each of defendant’s convictions. The fee is authorized by section 27.2(w) of the Clerk’s of Court Act which sets forth a schedule of fees for clerks of the circuit court. The relevant portion of the statute provides:

“The clerk shall be entitled to costs in all criminal and quasi-criminal cases from each person convicted or sentenced to supervision therein as follows *** Felony complaints, a minimum of \$80 and a maximum of \$125.” 705 ILCS 105/27.2 (w)(1)(a) (West 2006).”

Defendant asserts that the plain language of the subsection allows the clerk to assess the fee once for a felony case, and does not provide for multiple assessments where more than one conviction arises from a single case because, by authorizing the fee “in all criminal and quasi-criminal cases from each person convicted,” the legislature effectively limited the fee to one assessment per “felony complaint.” The State responds that the construction urged by defendant revises the plain language of an unambiguous statute to include a limitation not expressed by the legislature. See *People v. Goins*, 119 Ill. 2d 259, 265 (1988) (Where the language is clear, a statute may not be revised to include exceptions, limitations, or conditions that the legislature did not express.).

¶ 34 We determine that the plain language of the statute authorizes one fee per felony *complaint*. In *People v. Pohl*, 2012 Ill. App. 2d 100629, this court determined that section 27.2(w)(1)(b) of the Clerk’s of Court Act authorizes the imposition of a fee for each misdemeanor complaint. See 705 ILCS 105/27.2 (w)(1)(b) (West 2006). Although section 27.2(w)(1)(a) of the Clerk’s of Court Act is at issue in the present matter, we note that the only difference between the language of the subsections is that section 27.2(w)(1)(b) pertains to misdemeanor complaints, while section 27.2(w)(1)(a) pertains to felony complaints. See 705 ILCS 105/27.2 (w)(1)(a) (West 2006); 705 ILCS 105/27.2 (w)(1)(b) (West 2006). We follow our determination in *Pohl*. The plain language of the statute authorizes one fee per complaint. In the present matter, only one complaint was filed, and thus, only one \$125 Clerk’s fee should be imposed. Hence, we vacate one of the two \$125 Clerk’s fees assessed against defendant.

¶ 35 Defendant's fifth argument is that the Court Security-Services fee should have been assessed only one time per case. In the current matter, defendant was charged a \$15 Court Security Services fee on Counts III and IV. He maintains that the language of the Du Page County Code section 20-30, which tracks the language of the enabling statute, section 5-1103 of the Code (55 ILCS 5/5-1103 (West 2006)), provides for a single assessment of a security fee in each criminal case but does not provide for multiple assessments in a single case with multiple convictions.

¶ 36 Section 20-30 of the Du Page County Code provides that:

“In criminal, local ordinance, county ordinance, traffic and conservation cases, a court security fee shall be assessed against the defendant upon a plea of guilty, stipulation of facts or finding of guilty resulting in a judgment of conviction or order of supervision; or upon sentence of probation with entry of judgment.” Du Page County Code, Art. III, Sec. 20-30 (West 2006).

Defendant asserts that the language of the ordinance warrants a finding that the Court Security-Services fee may be assessed one time per case. The State responds that defendant's construction of the ordinance revises the plain language of an unambiguous ordinance and statute to include a limitation not expressed by the County Board and legislature. See *People v. Goins*, 119 Ill. 2d 259, 265 (1988) (Where the language is clear, a statute may not be revised to include exceptions, limitations, or conditions that the legislature did not express.).

¶ 37 We agree with the State. In *People v. Anthony*, 408 Ill. App. 3d 799, 811 (2011), the first district noted that the clear purpose of the statute was to defray court security costs. Quoting *People v. Williams*, 405 Ill. App. 3d 958, 961-62 (2010), the first district found that section 5-1103 of the Code permitted “assessment of this fee upon any judgment of conviction.” *Anthony*, 408 Ill. App.

3d at 811. Based upon the language of section 5-1103 of the Code and sections 20-30 of the Du Page County Code, along with the purpose of the provisions, we determine that the Court Security-Services Fee can be assessed upon any judgment of conviction. Accordingly, because defendant was found guilty of two counts, the trial court correctly imposed two \$15 fees.

¶ 38 Defendant's sixth argument is that the two \$10 County Jail Medical Cost Fund fees were improperly assessed because he suffered no injury. Defendant's brief states that the issue of whether an Arrestee's Medical Costs Fund fee may be imposed after all convictions, or just in those in which medical costs were incurred during the course of the arrest, is currently pending in the Illinois Supreme Court. Subsequent to the filing of defendant's brief, the Illinois Supreme Court decided *People v. Jackson*; 2011 WL 4391316 (Sept. 22, 2011). In *Jackson*, the Supreme Court affirmed the lower court's order assessing a \$10 Arrestee Medical Costs Fund fee against an uninjured defendant pursuant to section 17 of the County Jail Act. 730 ILCS 125/17 (West 2006)); *Jackson*, 2011 WL 4391316 at para. 23-24. The Illinois Supreme Court determined that section 17 of the County Jail Act properly authorized the imposition of a \$10 medical cost assessment against all defendants regardless of whether they received medical services. Thus, we determine that the trial court did not err when it assessed two County Jail Medical Cost Fund fees on defendant.

¶ 39 Defendant's seventh argument is that this cause must be remanded for recalculation of the Compliance Vendor Fee-Collection fee pursuant to section 27.2(gg) of the Code. 705 ILCS 105/27.2(gg) (West 2006). Section 27.2(gg) provides that the:

“Clerk of the court may add to any unpaid fees and costs under this Section a delinquency.

*** Notice to those parties may be made by signage posting or publication. The additional delinquency amounts collected under this Section shall be used to defray additional

administrative costs incurred by the clerk of the circuit clerk in collecting unpaid fees and costs.” 705 ILCS 27.2(gg) (West 2006).

¶ 40 The Supreme Court Rules provide a mechanism for the circuit clerk to notify defendant of any new fee amount. See Illinois Supreme Court Rule 366 (a)(5) (eff. Feb. 1, 1994). Because this court can modify fees and fines assessed against defendant without remand, we need not remand the case. *Id.* Instead, we order the circuit clerk of Du Page County to change the mittimus to reflect that defendant is only required to pay a single \$125 Clerk’s fee and that defendant’s Drug Court-Mental Health Court charge is satisfied. We further order the circuit clerk to recalculate any delinquency fees based upon the modified mittimus.

¶ 41 In conclusion, we determine that the trial court did not err when it dismissed defendant’s amended postconviction petition. Defendant did not receive ineffective assistance of postconviction counsel. We determine that defendant’s Drug Court-Mental Health Court charge is satisfied because the amount due was offset by defendant’s time spent in custody prior to the imposition of his sentence. We further determine that defendant should have been assessed a single \$125 Clerk’s fee. The trial court properly assessed all other fees.

¶ 42 For the foregoing reasons, the mittimus is modified to reflect that (1) the Drug Court-Mental Health Court charge is satisfied and (2) we vacate one of the two \$125 Clerk’s fees. We affirm as modified in part and vacate in part, the judgment of the circuit court of Du Page County.

¶ 43 Affirmed as modified in part and vacated in part.