

NOTICE

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2014 IL App (4th) 120945-U

NO. 4-12-0945

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 24, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
ERIC McCLELLAN,)	No. 08CF1008
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not err in summarily dismissing defendant's *pro se* postconviction petition.

(2) Cause remanded for imposition of fines by the trial court and application of defendant's \$500 pretrial-incarceration credit.

¶ 2 On July 24, 2012, defendant, Eric McClellan, filed a *pro se* postconviction petition, alleging, in part, his trial counsel and appellate counsel provided him ineffective assistance. On September 7, 2012, the trial court summarily dismissed defendant's petition. Defendant appeals, arguing his postconviction petition should not have been summarily dismissed because it presented an arguable claim his trial counsel provided him ineffective assistance by failing to locate and subpoena a witness whose alleged testimony arguably could

have changed the outcome of the case. We affirm.

¶ 3

I. BACKGROUND

¶ 4

In June 2008, the State charged defendant by information with one count of aggravated battery, alleging defendant made physical contact of an insulting or provoking nature with Officer David McLearn by placing his hands on McLearn's chest and pushing, knowing McLearn was a police officer engaged in the execution of his official duties. 720 ILCS 5/12-3, 12-4(b)(18), 12-4(e)(2) (West 2008). Later that month, a grand jury indicted defendant on the same charge.

¶ 5

In July 2008, in the pretrial-discovery order, the trial court ordered the State to provide the names and last known addresses of the persons whom the State intended to call for trial. In its answer, the State listed Officers David McLearn and Marshall Morris as witnesses, indicating the last known address for each of them as the Champaign police department.

¶ 6

At the beginning of the November 2008 jury trial, upon questioning by the trial court, defense counsel advised the court she had been unable to locate Morris, whom she believed had relocated to Arizona. Counsel stated:

"I did get a cell phone number from the police department.

They believed it was a contact number for him. I called on multiple occasions, and the person who answered the phone stated it was the wrong phone number. I think I've done everything that I possibly can to find this witness and was unsuccessful in doing so."

The State advised the court:

"Judge, I did the same checking with the Champaign [p]olice [d]epartment. They have a phone number and they know what State he's in, and that's all."

Defense counsel advised the court she was ready for trial.

¶ 7 At the jury trial, Officer McLearin testified he was on duty in the early morning hours of May 31, 2008. He testified he was in his full Champaign police-officer uniform and was riding by himself in a fully marked squad car. According to his testimony, McLearin was called to a fight in progress on North Randolph Street at 3 a.m. He was the first of three officers on the scene. When he arrived, 10 people were in the yard, but they ran into an apartment. It sounded to McLearin like the fight continued inside. After investigating the fight, the officers on the scene arrested Leman Smith. McLearin testified he had to struggle with Smith to get him handcuffed. Defendant was upset and yelling, asking why Smith was being arrested. McLearin testified he told defendant he needed to leave the area, which defendant eventually did.

¶ 8 At 4:20 a.m. the same day, McLearin was dispatched on a welfare check to the 50th block of East Bradley Avenue. Defendant was standing on the corner. McLearin testified he did not intend to arrest defendant when he first exited his vehicle and walked toward defendant, but rather, was simply checking on his welfare.

¶ 9 McLearin was the first officer on the scene by 30 to 45 seconds. McLearin exited his vehicle and asked defendant what he wanted. According to McLearin, defendant said " 'what's my brother's mother fucking bond.' " McLearin told defendant he did not know and his brother would go before a judge in the morning. Defendant moved toward him as he was walking up to the sidewalk, called McLearin a " 'bogus bitch,' " and said whenever he got a

chance he would " 'take care of [McLearin's] ass.' " Defendant was within arm's length at that point. Defendant was upset, put his hands on McLearin's chest, and pushed him. McLearin testified he braced himself and grabbed defendant's hands and pushed him back.

¶ 10 According to McLearin, defendant then clenched his fists and came toward McLearin again. McLearin sprayed defendant with pepper spray. Although not noted in his report, McLearin testified defendant continued to come toward him. McLearin then tackled defendant, who continued to struggle and tried to punch McLearin. At that point, McLearin told defendant he was under arrest. McLearin grabbed defendant's arm when defendant tried to punch him and flipped defendant onto his stomach. Defendant tucked his hands under his chest. McLearin and Officer Morris, who arrived during the confrontation, had to get defendant's hands from underneath him so he could be cuffed.

¶ 11 McLearin's squad car was equipped with working video equipment. He could not recall if the front of his squad car was facing defendant when he arrived on the scene. He did not activate the video equipment because it was generally used for traffic stops, not welfare checks.

¶ 12 McLearin testified Morris was no longer with the Champaign police department. He had taken another law-enforcement job in Arizona and moved away.

¶ 13 Defendant testified he and Lemar Smith were at the home of a woman with whom defendant was involved. Two other women were also at the home. The woman with whom defendant was involved had a child. The child's father came to the home and started arguing with the mother. When the police arrived, the child's father ran off, and everyone else went back in the house. The police started knocking on the door of the home. Smith eventually opened the door. The police grabbed him, dragged him outside the house, and arrested him.

According to defendant, he and McLearn had a verbal altercation at that time.

¶ 14 Defendant testified he later mistakenly called 9-1-1, instead of the police-satellite station, to determine Smith's bond. He hung up after calling 9-1-1, but the dispatcher returned his call. Defendant identified himself and told the dispatch operator why he called. Morris arrived shortly thereafter, and he and Morris were talking about why defendant called 9-1-1. Defendant saw McLearn make a U-turn in the middle of the street and park behind Morris. According to defendant, McLearn pulled out his mace and sprayed defendant without warning or cause. Defendant testified he and McLearn had not exchanged any words when this happened. Defendant stated to McLearn, "[W]hat did I do. I ain't do nothing." At that point, McLearn told defendant he was under arrest and cuffed him. Defendant denied pushing either McLearn or Morris.

¶ 15 McLearn testified in rebuttal he was the first to arrive in response to the 9-1-1 call. Morris did not arrive on the scene until 30 to 45 seconds, or even a minute, after McLearn. Defendant was not talking to Morris when McLearn pulled up. Defendant walked up to McLearn in an aggressive manner, using profanities. He told McLearn, "I'm going to take care of your ass when I get a chance," and then defendant put his hands on McLearn and pushed him.

¶ 16 During closing argument, defense counsel noted, "Officer Morris isn't here to support [McLearn's] story. His colleague has not come to support his side, and they've explained this away as he's moved to Arizona. But regardless, he wasn't here to support his colleague in this."

¶ 17 During deliberations, the jury had three questions, one of which inquired why Morris was not present to testify. The court responded, "You have heard the testimony in this

case. You must base your decision on the testimony that you have heard." Sometime later, the jury was given a *Prim* instruction (*People v. Prim*, 53 Ill. 2d 62, 289 N.E.2d 601 (1972)). The jury convicted defendant of aggravated battery.

¶ 18 In November 2008, defendant filed a motion for acquittal or, in the alternative, a motion for a new trial. In January 2009, the trial court denied defendant's motion.

¶ 19 On April 20, 2009, when defendant failed to appear for his sentencing hearing, the trial court sentenced defendant *in absentia* to 8 1/2 years' imprisonment. In its oral pronouncement of sentence, the court said nothing about fines. The written sentencing order gave defendant credit for 100 days served and indicated "the [d]efendant is ordered to pay costs of prosecution herein." The docket entry for April 20, 2009, states, in pertinent part:

"Cost Only Fee \$408.90 Signed Judge DIFANIS THOMAS J.

Sentence: Fines and/or Costs/Penalties and Fees

Cost Only 396.90 Preliminary Hearing 10.00

NOTICES MAILED 1ST 2.00"

The Champaign County circuit clerk's website (<https://secure.jtsmith.com/clerk/yytt331s.asp>)

(visited August 18, 2014), lists \$408.90 in assessments, including:

" 25.00 BOND -10% BOND FEE
5.00 DOCUMENT STORAGE
5.00 AUTOMATION
100.00 CIRCUIT CLERK FEE

25.00 COURT SECURITY
10.00 ARRESTEE'S MEDICAL
50.00 COURT FINANCE FEE
30.00 STATES ATTORNEY
25.00 VICTIMS FUND-NO FIN[sic]
5.00 DRUG COURT PROGRAM
10.00 PRELIMINARY HEARING
116.90 SHERIFF FEES
2.00 NOTICES MAILED 1ST"

¶ 20 In April 2009, defense counsel filed a motion to reduce sentence. In March 2010, the court denied the motion.

¶ 21 On direct appeal, defendant alleged the trial court erred in failing to instruct the jury on the lesser-included offense of resisting a peace officer. This court affirmed. *People v. McClellan*, 2011 IL App (4th) 100185-U. In January 2012, a petition for leave to appeal was denied. *People v. McClellan*, No. 113247, 963 N.E.2d 249 (2012).

¶ 22 On July 24, 2012, plaintiff filed a 530-page *pro se* postconviction petition, seeking relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2012)), which included 35 issues and 455 pages of exhibits. In pertinent part, defendant alleged trial counsel rendered ineffective assistance of counsel for failing to locate and subpoena Morris. Defendant asserted he asked counsel to subpoena Morris before trial, but she refused, saying it was better for defendant if Morris was not there. Defendant maintained trial counsel could have located Morris because he was working with another police force in Arizona. He told counsel he

was not ready for trial without Morris. Defendant further alleged, while in the squad car being transported to jail, Morris told him, "that it was wrong what officer McLearin did to me for nothing. But he couldn't do anything about it, because that's [*sic*] was his co-worker."

Defendant also alleged appellate counsel was ineffective for failing to raise trial counsel's ineffectiveness on this issue on direct appeal.

¶ 23 On September 7, 2012, the trial court summarily dismissed defendant's petition, finding the petition frivolous and patently without merit. With regard to the issue presented in this appeal, the court stated:

"Another issue raised by the [d]efendant was the failure of his attorney to call the other police officer who was allegedly present when the [d]efendant battered Officer McLearin. That officer was no longer with the Champaign [p]olice [d]epartment and had relocated to Arizona. Both the State's Attorney and the [d]efendant's attorney were unable to find and/or contact this officer. He had one other witness that he wanted his lawyer to call. However, only three people were present at the time of the incident: the [d]efendant, Officer McLearin and the former Champaign [p]olice [o]fficer.

The [d]efendant's trial was simple and straight forward [*sic*]. It was a matter of credibility. The jury believed Officer McLearin and not the [d]efendant."

¶ 24 This appeal followed.

¶ 25

II. ANALYSIS

¶ 26

A. The Postconviction Petition

¶ 27

On appeal, defendant argues the trial court erred in summarily dismissing his postconviction petition at the first stage of postconviction proceedings. He contends his petition presented an arguable claim of ineffective assistance because defense counsel failed to locate and subpoena a witness whose testimony arguably could have changed the outcome of his case. Defendant briefly mentioned ineffective assistance of appellate counsel in his opening brief but did not develop that argument beyond simply stating the right to effective assistance of counsel extends to appellate counsel, citing *Evitts v. Lucey*, 469 U.S. 387, 396-97 (1985). Because defendant only developed his claim of ineffective assistance of trial counsel for failure to adequately investigate and call Morris, he has abandoned the remaining 34 claims set forth in his postconviction petition, forfeiting them for review. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *People v. Guest*, 166 Ill. 2d 381, 414, 655 N.E.2d 873, 888 (1995).

¶ 28

The Act provides a means for a defendant to challenge a conviction or sentence based on an alleged violation of federal or state constitutional rights. *People v. Pendleton*, 223 Ill. 2d 458, 471, 861 N.E.2d 999, 1007 (2006). At the first stage of postconviction review, the trial court independently reviews the petition to determine whether it is "frivolous or is patently without merit" and dismisses the petition if it finds that to be the case. 725 ILCS 5/122-2.1(a)(2) (West 2012). To avoid dismissal at this stage, the petitioner need only present the gist of a constitutional claim. *People v. Edwards*, 197 Ill. 2d 239, 244, 757 N.E.2d 442, 445 (2001). Additionally, at this point in the proceedings, all well-pleaded allegations in the petition are taken as true and liberally construed in favor of the petitioner. *People v. Brooks*, 233 Ill. 2d 146,

153, 908 N.E.2d 32, 36 (2009). The summary dismissal of a postconviction petition at the first stage is reviewed *de novo*. *People v. Brown*, 236 Ill. 2d 175, 184, 923 N.E.2d 748, 754 (2010). "Although the trial court's reasons for dismissing a petition may provide assistance to this court, we review the judgment, and not the reasons given for the judgment." *People v. Jones*, 399 Ill. App. 3d 341, 359, 927 N.E.2d 710, 724-25 (2010).

¶ 29 A petition may be dismissed at the first stage only if it has no arguable basis either in law or in fact. *People v. Hodges*, 234 Ill. 2d 1, 11-12, 912 N.E.2d 1204, 1209 (2009). A petition has no arguable basis in law or fact if it is based on an indisputably meritless legal theory or a fanciful factual allegation. *Id.* at 16, 912 N.E.2d at 1212. To establish the ineffectiveness of trial counsel at the first stage of postconviction proceedings, defendant must show it is arguable counsel's performance fell below an objective standard of reasonableness and also it is arguable defendant was prejudiced by counsel's deficient representation. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

¶ 30 According to defendant in the case *sub judice*, his trial counsel failed to make sufficient attempts to locate Morris, arguing she should have been able to find Morris since he was working for a law-enforcement agency in Arizona. Defendant points out counsel's only attempt to locate Morris was to call a cellular-phone number she had been given by the Champaign police department. He maintains counsel should have (1) asked Morris's former colleagues or others associated with the Champaign police department how to contact him, (2) done a law-enforcement search, (3) sent a letter to Morris's last known address in the hopes it would be forwarded to his new address, and (4) hired an investigator to attempt to locate Morris. Defendant also argues a simple Internet search would have revealed Morris's contact information

in Arizona.

¶ 31 The State argues, among other things, a postconviction claim trial counsel failed to "call witnesses must be supported by an affidavit from the proposed witness," citing *People v. Enis*, 194 Ill. 2d 361, 380, 743 N.E.2d 1, 13 (2000). The state maintains defendant did not comply with the requirements of section 122-2 of the Act, which requires the petitioner to either provide "affidavits, records, or other evidence" to support the petition's allegations or explain the absence of such documentation (725 ILCS 5/122-2 (West 2012)), because he did not attach an affidavit from Morris to his postconviction petition or explain why he did not attach such an affidavit. The State argues such failure is fatal to defendant's claim Morris would have provided testimony favorable to his defense.

¶ 32 Defendant counters he alleged trial counsel was ineffective for failing to "investigate" Morris, not that she failed to "call a witness after conducting a reasonable investigation of that witness," and since the petition showed why the affidavit was not attached, he was exempt from providing one. He argues requiring an affidavit from a witness counsel failed to locate prior to trial would place an unreasonable burden on him to have to locate that witness from prison. Defendant cites no authority for these arguments.

¶ 33 The failure to meet the requirements of section 122-2 justifies the petition's summary dismissal. *People v. Delton*, 227 Ill. 2d 247, 255, 882 N.E.2d 516, 520 (2008). The purpose of requiring such materials is to ensure the allegations in the petition are capable of objective or independent corroboration. *Id.* at 254, 882 N.E.2d at 520.

¶ 34 Regarding defendant's argument his counsel's failure to "investigate" distinguishes him from other postconviction petitioners whose counsels have failed to "call" a

witness, we note:

"A claim that trial counsel failed to *investigate* and call a witness must be supported by an affidavit from the proposed witness. [Citations.] In the absence of such an affidavit, a reviewing court cannot determine whether the proposed witness could have provided testimony or information favorable to the defendant, and further review of the claim is unnecessary."

(Emphasis added.) *Enis*, 194 Ill. 2d at 380, 743 N.E.2d at 13.

See also *Guest*, 166 Ill. 2d at 401-02, 655 N.E.2d at 882-83 (an allegation trial counsel was ineffective for failing to *investigate* alibi and prosecution witnesses before trial must be supported by affidavits from those individuals).

¶ 35 Regarding defendant's argument he should be relieved of the statutory requirement to attach Morriss' affidavit or explain why it is not attached because of his status as a prisoner, we turn to the supreme court's decision in *People v. Collins*, 202 Ill. 2d 59, 68, 782 N.E.2d 195, 200 (2002), which states:

"We recognize, of course, that requiring the attachment of 'affidavits, records, or other evidence' will, in some cases, place an unreasonable burden upon post-conviction petitioners. Indeed, *Washington* and *Williams* are two such cases. This does not mean, however, that the petitioners in such cases are relieved of bearing any burden whatsoever. On the contrary, section 122-2 makes clear that the petitioner who is unable to obtain the necessary

'affidavits, records, or other evidence' must at least explain why such evidence is unobtainable. In this case, defendant is asking to be excused not only from section 122-2's *evidentiary* requirements but also from section 122-2's *pleading* requirements. Nothing in the Act authorizes such a comprehensive departure." (Emphases in original.)

¶ 36 Here, defendant did not tender an affidavit from Morris setting forth the testimony he would have given at trial, nor did he explain in his postconviction petition why he had not attached such an affidavit. Moreover, the record does not shed sufficient light on what Morris's testimony would have been. All we have is defendant's belief as to what Morris's testimony would have been and speculation as to its result had it been given. Therefore, defendant's allegations are not capable of objective or independent corroboration without an affidavit from Morris.

¶ 37 Defendant further argues his case is distinguishable from *Enis* because dismissal of *Enis*'s postconviction petition for failure to attach the required supporting affidavits or explain their absence occurred during the second stage in the postconviction proceedings, whereas here, dismissal was during the first stage. However, the Act makes no such distinction, nor does the case law. See *Id.* at 66, 782 N.E.2d at 198 ("Contrary to the clear mandate of section 122-2 of the Act, defendant's petition was unsupported by 'affidavits, records, or other evidence' and offered no explanation for the absence of such documentation. This fact alone justifies the summary dismissal of defendant's petition."); *Delton*, 227 Ill. 2d at 255, 882 N.E.2d at 520 ("the failure to either attach the necessary affidavits, records, or other evidence or explain their

absence is fatal to a post-conviction petition [citation] and by itself justifies the petition's summary dismissal" (internal quotation marks omitted) (quoting *Collins*, 202 Ill. 2d at 66, 782 N.E.2d at 198)); *People v. Harris*, 224 Ill. 2d 115, 126, 862 N.E.2d 960, 967 (2007) ("failure to comply with section 122-2 is fatal and by itself justifies the petition's summary dismissal").

¶ 38 Defendant further argues a "simple [I]nternet search" should have located Morris. Defendant attached to his brief the results of a "whitepages.com" Internet search reflecting an Arizona address and phone number for a Marshall Morris with a previous location of Champaign, Illinois. He explains the search, last visited on March 4, 2014, yielded seven results for Marshall Morris in Arizona, the fourth of which listed the person with a previous address in Champaign, Illinois. Defendant asks this court to take judicial notice of this Internet search pursuant to Illinois Rule of Evidence 201 (eff. Jan 1, 2011), arguing the search results "constitute facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, *i.e.*, an [I]nternet search and its result." Defendant cites *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 118, n. 9, 2 N.E.3d 1143, stating the court may take judicial notice of information on a public website even though the information was not in the record on appeal. In *Crawford*, the court took judicial notice of the distance between two points as determined by the Google Maps website. *Id.*

¶ 39 "[A]n appellate court may take judicial notice of matters not previously presented to the trial court when the matters are capable of instant and unquestionable demonstration." *Boston v. Rockford Memorial Hospital*, 140 Ill. App. 3d 969, 972, 489 N.E.2d 429, 432 (1986) (citing *May Department Stores Co. v. Teamsters Union Local No. 743*, 64 Ill. 2d 153, 159, 355 N.E.2d 7, 9 (1976)). The standard legal meaning of "judicial notice" is a "court's acceptance, for

purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact." Black's Law Dictionary 863-64 (8th ed. 2004). The fact a 2014 search of the Whitepages website resulted in a possible address for Morris is not an indisputable fact of what a similar search may have shown in 2008. The likelihood defense counsel could have found Morris's Arizona address on Whitepages in 2008 is subject to dispute, and this court will not take judicial notice of what was discovered on Whitepages in 2014.

¶ 40 Defendant's petition does not contain affidavits, records, or other evidence to support his allegations, nor does the petition explain why those documents are absent as required by section 122-2. Without Morris's affidavit there is no evidence to support defendant's allegations or provide any objective or independent corroboration thereof. Nor can defendant's verification affidavit or supporting affidavits substitute for Morris's affidavit as required under section 122-2. For that reason, the circuit court's summary dismissal was proper.

¶ 41 We further note, defense counsel did not fail to conduct any investigation. She attempted to reach Morris by the only contact information she had received from his former employer, the Champaign police department. "[F]ailure to find a witness, *per se*, cannot constitute ineffective assistance of counsel[.]" *People v. Kubat*, 114 Ill. 2d 424, 433, 501 N.E.2d 111, 115 (1986). Nothing in the record suggests counsel's inability to find Morris was the result of her failure to investigate or her incompetence. Notably, the State's Attorney was also unable to find Morris.

¶ 42 B. Fines Imposed by the Circuit Clerk
and Credit for Time Served

¶ 43 The State points out three of the assessments the circuit clerk imposed on defendant in this case are fines and the circuit clerk lacks authority to impose fines. Referring to

"FINES & FEES INFORMATION" on the circuit clerk's website, the three assessments are \$10 for "ARRESTEES MEDICAL," \$25 for VICTIMS FUND-NO FIN [*sic*]," and \$5 for "DRUG COURT PROGRAM." The State cites *People v. Williams*, 2013 IL App (4th) 120313, ¶ 18, 991 N.E.2d 914, for the proposition these are mandatory fines. The State further points out the docket entry states it was "signed" by the trial court, lists three amounts (\$396.90, \$10, and \$2) and "Cost Only," and does not specify any fines were imposed. These three amounts, when added, equal the total amount of the assessments listed on the circuit clerk's website (\$408.90).

¶ 44 The State correctly contends the trial court may not delegate to the circuit clerk its responsibility to impose sentence (*People v. Mitchell*, 395 Ill. App. 3d 161, 166, 916 N.E.2d 624, 629 (2009)) and the circuit clerk lacks authority to impose fines (*People v. Swank*, 344 Ill. App. 3d 738, 747-48, 800 N.E.2d 864, 871 (2003))). Further, the State points out fines imposed by the circuit clerk are void. *Mitchell*, 395 Ill. App. 3d at 166, 916 N.E.2d at 629; *People v. Chester*, 2014 IL App (4th) 120564, ¶¶ 32, 38, 5 N.E.3d 227; *People v. Montag*, 2014 IL App (4th) 120993, ¶¶ 37, 38, 5 N.E.3d 246.

¶ 45 Therefore, the State argues the fines imposed by the circuit clerk should be vacated and the cause remanded for the trial court to impose mandatory fines, including those not imposed but required at the time of defendant's May 31, 2008, offense, *e.g.*, the "lump sum" surcharge of \$10 for each \$40, or fraction thereof, of fine imposed (730 ILCS 5/5-9-1(c) (West 2008)).

¶ 46 The State further points out the record does not indicate defendant was given credit against his fines for the 100 days of pretrial time served as required in section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2008)), with the credit not

to exceed the assessments. *People v. White*, 333 Ill. App. 3d 777, 782, 776 N.E.2d 836, 840 (2002) (the section 110-14 credit does not apply to court costs or lab analysis fees, but only to fines). In addition, the State points out, by virtue of their individual statutes, the medical costs fund fee, the "lump sum" surcharge, and the violent crime fines are not eligible for credit under section 110-14(a). *People v. Unander*, 404 Ill. App. 3d 884, 890, 936 N.E.2d 795, 800 (2010). The State argues defendant is entitled to a \$500 credit against any appropriate fines under section 110-14(a).

¶ 47 Defendant concedes the issues raised by the State. He points out the \$50 court finance fee is a fine subject to a \$5 per day offset, citing *People v. Ackerman*, 2014 IL App (3d) 120585, ¶¶ 24-31, 10 N.E.3d 470. This court recently held the court finance fee is a fine that can only be imposed by the trial court. *People v. Smith*, 2014 IL App (4th) 121118, ¶ 54, ___ N.E.3d ___.

¶ 48 Thus, we affirm the summary dismissal of defendant's postconviction petition. However, we vacate the fines imposed by the circuit clerk and remand this case to the trial court for imposition of the mandatory assessments in effect at the time of the offense. We direct the court to give defendant credit for pretrial incarceration in the amount of \$500 against fines appropriate for the credit. We direct the court's attention to the following cases for assistance in making its determinations. *Smith*, 2014 IL App (4th) 121118; *People v. Rogers*, 2014 IL App (4th) 121088, 13 N.E.3d 1280; *People v. LaRue*, 2014 IL App (4th) 120595, 10 N.E.3d 959; *People v. Warren*, 2014 IL App (4th) 120721; *Williams*, 2013 IL App (4th) 120313, 991 N.E.2d 914; *People v. O'Laughlin*, 2012 IL App (4th) 110018, 979 N.E.2d 1023; *Chester*, 2014 IL App (4th) 120564, 5 N.E.3d 227; and *Montag*, 2014 IL App (4th) 120993, 5 N.E.3d 246.

¶ 49

III. CONCLUSION

¶ 50 For the reasons stated, we affirm the trial court's summary dismissal of defendant's postconviction petition and vacate the mandatory fines imposed by the clerk of the Champaign County circuit court. We remand with directions that the trial court (1) reimpose mandatory fines in this case, (2) direct the circuit clerk to apply defendant's statutory credit against creditable fines, and (3) issue an amended sentencing judgment consistent with this order. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 51 Affirmed in part and vacated in part; cause remanded with directions.