

No. 1-13-2051

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. 12 CR 5776
)	
MAURICE JOHNSON,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

O R D E R

¶1 *Held:* The Court System Fee is a fine that is subject to \$5 per day presentence custody credit; fines and fees order corrected.

¶2 Following a bench trial, the defendant, Maurice Johnson, was found guilty of delivery of a controlled substance with intent to deliver and sentenced to a five-year term of imprisonment. On appeal, defendant does not challenge the propriety of his conviction or sentence, but rather, solely contends that his fines and fees order should be corrected. Specifically, he contends that he was improperly assessed the Electronic Citation Fee and that he is entitled to have his

presentence custody credit applied against the Court System Fee that was imposed upon him because it is a fine, and not a fee.

¶3 The record shows that defendant was charged with possession of a controlled substance with intent to deliver in relation to an incident that occurred on February 25, 2012, near the intersection of West End Avenue and Karlov Avenue in Chicago, Illinois. Defendant was convicted of the charged offense on evidence showing that at approximately 5:30 p.m. on the day of the incident, Chicago police officer Danny Salgado observed defendant engage in several hand to hand drug transactions. Shortly thereafter, Officer Salgado and his partner, Officer Nisha Torres, detained defendant and recovered 18 ziploc bags containing suspect heroin, which defendant had attempted to discard. The parties stipulated that the contents of the ziploc bags weighed 4.8 grams collectively and tested positive for heroin. Defendant was sentenced to a five-year term of imprisonment, and certain fines and fees were assessed against him.

¶4 On appeal, defendant solely contends that his fines and fees order should be corrected to reflect a total assessment of \$339. The propriety of an order imposing fines and fees is a matter of statutory interpretation, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶5 Defendant first contends, and the State concedes, that he was improperly assessed the \$5 Electronic Citation Fee because he was not convicted of any traffic, misdemeanor, municipal ordinance, or conservation case. 705 ILCS 105/27.3e (West 2012). We agree and order this fee vacated.

¶6 Defendant next contends that he is entitled to \$5 per day presentence custody credit toward the \$50 Court System Fee that was imposed upon him because it constitutes a fine. The State argues that this particular assessment is a fee, and thus not subject to presentence credit.

¶7 Pursuant to section 110-14(a) of the Code of Criminal Procedure (725 ILCS 5/110-14(a) (West 2012)), a defendant who is incarcerated on a bailable offense and who, upon conviction, is assessed a fine, is entitled to a \$5 credit toward that fine for each day spent in presentence custody. Here, defendant spent 466 days in presentence custody, and is thus entitled to \$2,330 in credit to be applied toward applicable fines.

¶8 The most important factor in determining whether a charge is a fine or a fee is whether the charge seeks to compensate the State for any costs incurred as a result of prosecuting the defendant, given that a fine is punitive in nature, whereas a fee seeks to recoup expenses incurred by the State. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A charge labeled as a fee by the legislature may nevertheless constitute a fine, notwithstanding the words actually used by the legislature. *Graves*, 235 Ill. 2d at 250.

¶9 Pursuant to section 5-1101(c) of the Counties Code, a \$50 Court System Fee can be assessed against a defendant who committed a felony. 55 ILCS 5/5-1101(c) (West 2012). The State argues that the Court System Fee constitutes a fee because it is deposited into the county's general fund to finance the court system and is thus clearly intended to compensate the county for a portion of the cost of maintaining a court system that is essential to the administration of justice and prosecuting society's offenders.

¶10 In *Graves*, however, the supreme court found that section 5-1101 of the Counties Code "sets forth fines" and penalties although they are labeled "fees to finance court system." *Graves*,

235 Ill. 2d at 251-52. In so finding, the court specifically noted that such fines included the one authorized by the particular sub-section at issue here. *Graves*, 235 Ill. 2d at 253-55 (citing 55 ILCS 5/5-1101(c)). In turn, in *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21, the reviewing court cited *Graves* in finding that the Court System Fee was a fine.

¶11 Although the State acknowledges that the holding in *Smith* is contrary to its position, it argues that *Smith* was wrongly decided. We disagree. *Smith* was decided consistently with the holding of the Illinois Supreme Court in *Graves*, which we are bound to follow. Moreover, *Smith* does not stand alone and pursuant to the weight of authority, we find that the Court System Fee constitutes a fine. See *People v. Ackerman*, 2014 IL App (3d) 120585, ¶¶30-31; *People v. Smith*, 2014 IL App (4th) 121118, ¶ 54; *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17-18). Accordingly, we hold the court system fee is subject to \$5 per day presentence custody credit. *Graves*, 235 Ill. 2d at 251-55.

¶12 The record shows that of defendant's \$2,330 in presentence custody credit, only \$2,135 was applied toward creditable fines. Accordingly, defendant has \$195 of available credit to apply toward the \$50 Court System Fee, thereby satisfying it in its entirety. Consequently, defendant is left with a total remaining assessment of \$339 after application of this credit and the vacation of his \$5 Electronic Citation Fee.

¶13 Pursuant to Supreme Court Rule 615(b)(1) (eff. August 27, 1999), and our authority to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we order the clerk of the circuit court to correct the fines and fees order to reflect the vacation of the \$5 Electronic Citation Fee and the offset of the \$50 Court System Fee in its entirety, resulting in an assessment balance of \$339.

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¶14 Affirmed; fines and fees order corrected.