THIRD DIVISION
JUNE 3, 2015

No. 1-13-2804

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 23218
	)	
CAMERON SCOTT BOWERS,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment entered on jury conviction of unlawful restraint affirmed; order imposing fines, fees and costs corrected.

¶ 2 Following a jury trial, defendant Cameron Scott Bowers was found guilty of unlawful restraint and sentenced to three years in prison. On appeal, defendant does not contest the sufficiency of the evidence to sustain his conviction or the length of the sentence imposed. He solely contends that the order assessing fines, fees and costs is incorrect, and requests that certain assessments be vacated, and others be offset by his $5-per-day pre-sentence custody credit.

¶ 3 The record shows that defendant was found guilty of unlawful restraint on evidence showing that on November 28, 2012, he restrained Huazi Han inside a moving car on the west side of Chicago. In the sentencing hearing which followed, arguments were presented in aggravation and mitigation, and defendant exercised his right to allocution. The court noted that in October 2012, defendant had been convicted of aggravated unlawful use of a weapon, a Class 4 felony, and committed the instant crime while on parole from that offense. The court then sentenced defendant to three years' imprisonment with a recommendation for impact incarceration, gave him credit for 266 days of pre-sentence custody, and assessed fees and fines in the amount of $709. In this court, defendant solely challenges the propriety of a number of those assessments, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 4 Defendant contends, the State concedes, and we agree, that defendant's $250 DNA ID system fee, and $5 electronic citation fee should be vacated. The DNA ID fee was improperly assessed against defendant because he had already been registered in the DNA databank for his prior felony conviction (*People v. Marshall*, 242 Ill. 2d 285, 301-02 (2011)), and because unlawful restraint is a Class 4 felony (720 ILCS 5/10-3(b) (West 2012)), exempt from the electronic citation fee statute, which applies to traffic, misdemeanor, municipal ordinance or conservation cases (705 ILCS 105/27.3e (eff. Aug. 16, 2011)).

¶ 5 Similarly, the parties and this court agree that defendant is entitled to a credit of $5-per-day for the 266 days he spent in pre-sentence custody, amounting to a total of $1330, which can offset certain fines imposed by the circuit court. 725 ILCS 5/110-14 (eff. Jan. 1, 2005). These include the mental health court fine of $10; the youth diversion/peer court fine of $5; the drug

court fine of $5; the Children's Advocacy Center fine of $30; and the State Police operations fee of $15.

¶ 6 Defendant further contends that his pre-sentence custody credit should be used to offset the $2 State's Attorney automation fee, the $2 public defender automation fee, and the $10 probation and court services operations fee imposed on him. The State responds that defendant's request is precluded by *People v. Rogers*, 2014 IL App (4th) 121088, *as modified on denial of reh'g* (Aug. 20, 2014). In *Rogers*, the Fourth District appellate court held that the State's Attorney automation fee (55 ILCS 5/4–2002.1(c) (eff. Jun. 1, 2012)), is a fee because it is intended to reimburse the State's Attorneys for their expenses related to automated record-keeping systems, and therefore not offset by pre-sentence custody credit. *Id.* at ¶ 30 (citing *People v. Warren*, 2014 IL App (4th) 120721, ¶ 108). We agree, and hold that defendant is not entitled to credit for the State's Attorney automation fee.

¶ 7 Although *Rogers* did not directly address the $2 public defender automation fee, we find that the reasoning which led to its conclusion on the State's Attorney fee, applies with equal force here. The statutory language for the public defender automation fee is identical to that of the State's Attorney automation fee statute, with the exception that the former fee benefits the Cook County Public Defender. See 55 ILCS 5/3-4012 (eff. Jun. 1, 2012). In this case, defendant was represented by the public defender's office at trial, and does not make any compelling arguments to distinguish this fee from the State's Attorney automation fee, or why *Rogers* should not apply. We therefore find that defendant is not entitled to credit for the public defender automation fee.

¶ 8 *Rogers* also held that whether the $10 probation and court services operations fee (705 ILCS 105/27.3a (1.1) (West 2012)), was a fine or a fee depended on the particular circumstances

of the case. *Rogers*, 2014 IL App (4th) 121088 at ¶¶ 37-38. In situations where the trial court ordered the probation office to file a pre-sentence investigation report, the assessment was deemed compensatory in nature, and therefore a fee. *Id.* at ¶ 37. Here, the record shows that defendant participated in a pre-sentence investigation, and the probation department filed a report. We therefore leave intact the $10 fee for probation and court services department operations (*Id.* at ¶ 39), and decline defendant's invitation to depart from the well-reasoned conclusion in *Rogers*.

¶ 9 Defendant also contends that his pre-sentence custody credit should be used to offset the $50 court system fee, which is a fine. The State argues, on the other hand, that the court system fee is not a fine, but a fee, and that it cannot be offset by the pre-sentence custody credit. We reject the State's contention.

¶ 10 Following the logic of the supreme court in *People v. Graves*, 235 Ill. 2d 244, 254-55 (2009), the Second and Third Districts of this appellate court have found that the court system fee is a "fine" used to finance the court system, and therefore defendant is entitled to a $5-per-day credit against that fee for time spent in pre-sentence custody. See, *e.g.*, *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 18-21; *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17; *People v. Ackerman*, 2014 IL App (3d) 120585, ¶¶ 28-30. We find these opinions well-reasoned, and, likewise conclude that defendant's pre-sentence custody credit can be used to offset the $50 court system fee. *Id.*

¶ 11 In sum, we find that defendant's $250 DNA ID system fee, and $5 electronic citation fee must be vacated. We also find that the $10 mental health court fine; the $5 youth diversion/peer court fine; the $5 drug court fine; the $30 Children's Advocacy Center fine; the $15 State Police

operations fee; and the $50 court system fee, which total $115, must be fully credited for the time defendant served in pre-sentence custody. *Wynn*, 2013 IL App (2d) 120575 at ¶ 18. We further find that defendant is not entitled to credit for the $2 State's attorney records automation fee, the $2 public defender records automation fee, and $10 probation and court services operations fee, and leave those fees intact.

¶ 12 Accordingly, the total of fines, fees and costs should be reduced to $454, and based on the fines offset by his pre-sentence custody credit, the mittimus should be corrected to reflect that defendant owes $339. Pursuant to our authority under Supreme Court Rule 615(b) (1) (eff. Aug. 27, 1999), we direct the clerk of the court to correct the order imposing fines, fees and costs as indicated, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 13 Affirmed; fines, fees and costs order corrected.