

No. 1-13-2984

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. 13 CR 11615
)	
GIDEON STEVENS,)	Honorable
)	Jorge Luis Alonso,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

O R D E R

¶ 1 Held: Defendant did not forfeit his challenge to improper imposition of fines and fees by failing to file a motion to vacate his guilty plea prior to appeal; the \$50 court system assessment is a fine; the \$2 Public Defender and State's Attorney Records Automation charges are fees; the \$10 probation and court services operations assessment is a fee; and the fines and fees order is amended to reflect the correct total.

¶ 2 Defendant Gideon Stevens pled guilty to violation of the Sex Offender Registration Act (730 ILCS 150/3(a) (West 2012)) for failure to re-register his address within one year from the date of initial registration and was sentenced to 2 years' probation with 69 days credit for presentence incarceration time served, and assessed \$689 in fines, fees, and costs, among other

requirements. On appeal, defendant contends several of the imposed fines and fees were improperly assessed and that his presentence incarceration credit was not applied to several of his fines. Defendant requests that we amend the order accordingly to reflect the correct amount of \$560 in fines, fees, and costs.

¶ 3 During the plea hearing, the trial court accepted defendant's guilty plea after obtaining a brief factual basis from the State. Defendant was convicted in Maryland in May 2005 of a sex offense and subsequently moved to Illinois. On May 29, 2013, defendant was arrested for failing to re-register his address by the required date, after Chicago police officers curbed his vehicle for a minor traffic violation.

¶ 4 In addition to probation, the trial court credited defendant for 69 days of presentence custody and assessed a total of \$689 in fines, fees and costs which included, in part, a \$50 court system fee; \$30 Children's Advocacy Center fine; \$15 State Police Operations fee; \$10 mental health court fine; \$10 probation and court services operations fine; \$5 youth diversion/peer court fine; \$5 drug court fine; \$5 electronic citation fee; \$2 Public Defender Records Automation fee; and a \$2 State's Attorney Records Automation fee. A \$500 sex offender fine is also listed on the order but not included in the total assessed.

¶ 5 Defendant appeals from this order, alleging the \$5 electronic citation fee and \$500 sex offender fine should be vacated, and that defendant's \$5 per day incarceration credit should be applied against the \$50 court system fine, \$30 Children's Advocacy Center fine, \$15 State Police Operations assessment, \$10 mental health court fine, \$10 probation and court services operations fine, \$5 youth diversion/peer court fine, \$5 drug court fine, and the \$2 Public Defender and State's Attorney Records Automation fines, crediting defendant a total of \$129 in improperly applied fines and fees. Defendant's appeal was filed without moving to vacate his plea of guilty.

¶ 6 Before we progress to the merits of defendant's claim, we must first address the State's contention that his appeal should be dismissed for failure to file a motion to vacate his guilty plea prior to his appeal in accordance with Illinois Supreme Court Rule 604(d) (eff. Dec. 11, 2014). The State contends this mandatory requirement is a procedural bar to defendant's appeal and requires its dismissal without proceeding to the merits for want of appellate jurisdiction.

¶ 7 The Illinois Supreme Court has generally held that a defendant convicted on a plea of guilty must first file a timely motion to withdraw his plea as a condition precedent for appeal in accordance with Rule 604(d). Ill. S. Ct. R. 604(d) (eff. Dec. 11, 2014); *People v. Wilk*, 124 Ill. 2d 93, 105 (1988). Although failure to comply with this rule does not deprive a reviewing court of its jurisdiction as the State suggests, it generally requires any subsequent appeal to be immediately dismissed without consideration on its merits. *In re William M.*, 206 Ill. 2d 595, 601 (2003); *People v. Flowers*, 208 Ill. 2d 291, 301, 308 (2003).

¶ 8 Our supreme court, however, has recognized certain exceptions that allow a reviewing court to proceed to the merits despite noncompliance with Rule 604(d), including a challenge to an alleged void order. See *In re William M.*, 206 Ill. 2d at 601. Because a challenge to court-ordered fines and fees presents a question of statutory interpretation, it constitutes an allegation that the sentence is void. See *People v. Elcock*, 396 Ill. App. 3d 524, 538 (2009); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 26. Challenges to an alleged void order are generally not subject to forfeiture. *People v. Marshall*, 242 Ill. 2d 285, 302 (2011). Therefore, defendant's claim on appeal falls under an exception to Rule 604(d) and we may proceed to its merits.

¶ 9 On appeal, the reviewing court may modify the fines and fees order without remanding the case back to the circuit court. Ill. S. Ct. R 615(b)(1) (eff. Aug. 27, 1999) ("[o]n appeal the reviewing court may *** modify the judgment or order from which the appeal is taken"); *People*

v. McCray, 273 Ill. App. 3d 396, 403 (1995) ("[r]emandment is unnecessary since this court has the authority to directly order the clerk of the circuit court to make the necessary corrections"). Moreover, "courts have an independent duty to vacate void orders and may *sua sponte* declare an order void." *People v. Thompson*, 209 Ill. 2d 19, 27 (2004). The propriety of court-ordered fines and fees is reviewed *de novo*. *Elcock*, 396 Ill. App. 3d at 538.

¶ 10 We accept the State's concession that the \$500 sex offender fine and the \$5 electronic citation fee should be vacated because they are inapplicable to defendant's offense. An electronic citation fee may only be imposed when a defendant is convicted of a traffic violation and therefore does not apply. See 705 ILCS 105/27.3e (West 2012). The sex offender fine may only be imposed when defendant is convicted of a "sex offense" as defined by Section 2 of the Sex Offender Registration Act which does not include failure to register. See 730 ILCS 150/2 (West 2012). The State also agrees, and we accept, that defendant's presentence incarceration credit should be applied to the \$30 Children's Advocacy Center fine, \$15 State Police Operations charge, \$10 mental health court fine, and the \$5 youth diversion/peer court and drug court charges because they are fines, not fees. See *People v. Graves*, 235 Ill. 2d 244, 252 (2009); *People v. Jones*, 397 Ill. App. 3d 651, 659 (2009); *People v. Fort*, 373 Ill. App. 3d 882, 884-89 (2007).

¶ 11 The State maintains, however, that defendant's presentence incarceration credit is not applicable to offset the \$50 court system charge, \$2 Public Defender Records Automation charge, \$2 State's Attorney Records Automation charge, and \$10 probation and court services operations charge because presentence incarceration credit only offsets fines and these particular charges are considered fees. Defendant disagrees and asks this court to consider them fines.

¶ 12 It is well-established that the presentence incarceration credit (725 ILCS 5/110-14(a) (West 2012)) applies only to reduce fines, not fees. *Jones*, 223 Ill. 2d at 599. A fine is a punitive charge imposed as punishment on a person convicted of a criminal offense. *Id.* at 581. A fee, in contrast, is not pecuniary and seeks only to reimburse the State for expenses incurred for prosecuting a particular defendant. See *Graves*, 235 Ill. 2d at 250. A charge may still be a fine or fee despite the language used in the statute, depending on the particular attributes of the charge at issue. *Id.* "Other factors to consider are whether the charge is only imposed after conviction and to whom the payment is made." *Id.* at 251. However, the "'central characteristic'" separating a fine from a fee is whether the charge seeks to reimburse the State for costs incurred during prosecution. (Emphasis in original.) *Id.* quoting *Jones*, 223 Ill. 2d at 596.

¶ 13 Applying the supreme court's analysis in *Graves*, this court has repeatedly held that the court system assessment is a fine and not a fee. See *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30; *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17; *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21. Furthermore, the *Graves* court specifically referred to this charge as a "monetary penalty." *Graves*, 235 Ill. 2d at 253. As such, we reject the State's argument that this charge is a fee because it compensates the county for the cost of providing a court system "which is necessary to prosecute a criminal defendant," and disagree with the State's argument that *Smith* was wrongly decided. Therefore, in accordance with *Graves* and our subsequent decisions, defendant is entitled to presentence incarceration credit against the \$50 court system assessment because it is a fine.

¶ 14 Defendant also contends that the \$2 Public Defender and \$2 State's Attorney Records Automation charges (55 ILCS 5/3-4012, 4-2002.1(c) (West 2012)) are fines and not fees because they do not reimburse the State for costs incurred in prosecution. However, this court has

previously held that the plain language of the statute clearly indicates that the State's Attorney fee is meant specifically to reimburse the State for expenses related to automated record keeping as a collateral function of the prosecutorial process and is not meant to be punitive in nature. See *People v. Warren*, 2014 IL App (4th) 120721, ¶ 108; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. Additionally, because the statutory language of both the Public Defender and State's Attorney Records Automation charges is identical except for the name of the organization benefitting, we find no reason to draw a distinction between the two and conclude both charges constitute fees. See 55 ILCS 5/3-4012, 4-2002.1(c) (West 2012).

¶ 15 Defendant makes the argument that requiring the court to determine whether a defendant used the services of the public defender and address whether this charge constitutes a fine or a fee on a case-by-case basis according to *Rogers* is unworkable. However, the record makes clear defendant was represented by an appointed public defender, and consequently, this issue is irrelevant in the case at hand. Therefore, the Public Defender Records Automation charge is also a fee and defendant is not entitled to presentence incarceration credit against it or the State's Attorney Records Automation fee.

¶ 16 Defendant next argues that he is entitled to apply presentence incarceration credit towards the \$10 probation and court services operations charge (705 ILCS 105/27.3a(1.1) (West 2012)). Although defendant acknowledges this court's contrary holding in *Rogers*, 2014 IL App (4th) 121008, he asks us to depart from this holding because this charge is a blanket assessment collected from every defendant only in addition to the imposition of a court automation fee, and therefore, defendant argues it constitutes a penalty that cannot be considered a fee.

¶ 17 In *Rogers*, this court discussed the compensatory nature of probationary charges and held that according to *Graves*, when the probation office is involved in the defendant's prosecution,

for example, when defendant is eligible for probation and the probation office is used to conduct a pretrial investigation report, this assessment constitutes a fee. See *Rogers*, 2014 IL App (4th) 121008, ¶¶ 37-38; accord *People v. Bradford*, 2014 IL App (4th) 130288, ¶¶ 39-40; see also *People v. White*, 333 Ill. App. 3d 777, 782 (2002); *People v. Despenza*, 318 Ill. App. 3d 1155, 1157 (2001).

¶ 18 Here, like *Rogers and Bradford*, defendant was eligible for probation and the probation office was used to create a pretrial investigation report. Furthermore, the trial court considered the information contained in this report during sentencing in lieu of requesting a presentencing report, and thus, the probation and court services operations assessment is reimbursing the State for charges incurred in his prosecution. Moreover, this court has found that probation costs are "fundamentally compensatory" in nature (*White*, 333 Ill. App. 3d at 782) and the case law defendant cites does not support the proposition that an assessment is necessarily a penalty because it is only collected in addition to another cost. Therefore, we decline to depart from our holding in *Rogers*, and conclude the \$10 probation and court services operations charge is a fee which may not be offset by presentence incarceration credit.

¶ 19 In conclusion, we hereby vacate the \$500 sex offender fine and \$5 electronic citation fee, and credit defendant's presentence incarceration time served against the \$30 Children's Advocacy Center fine, \$15 State Police Operations fine, \$10 mental health court fine, \$5 youth diversion/peer court and drug court fines, and \$50 court system assessment, for a total amended fines and fees order of \$569. The circuit court's order is affirmed in all other respects including with regard to the \$2 Public Defender Records Automation fee, \$2 State's Attorney Records Automation fee, and the \$10 probation and court services operations fee.

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¶ 20 Affirmed in part; vacated in part; the clerk of the circuit court is directed to correct the fines and fees portion of sentencing order as set forth herein.