

No. 1-14-0626

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 17
)	
GEORGE ANDERSON,)	Honorable
)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Gordon and Palmer concurred in the judgment.

O R D E R

¶ 1 **Held:** Although the parties agree several charges were erroneously imposed on defendant, he is not entitled to presentence incarceration credit against the \$2 Public Defender and State's Attorney Records Automation charges because they are fees, not fines; The fines and fees order is amended to reflect the correct total.

¶ 2 Defendant George Anderson pled guilty to residential burglary and was sentenced to 5 years' imprisonment with a recommendation for impact incarceration; credited 198 days for presentence incarceration time served; and assessed \$449 in fines, fees, and costs. On appeal, defendant contends some 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 to reflect the corrected amount of \$375 in fines, fees, and costs.

¶ 3 Defendant was charged by information with residential burglary and initially pled not guilty. Prior to trial, defendant notified the court he wished to change his plea. At the change of plea hearing, the trial court accepted defendant's guilty plea after obtaining a brief factual basis from the State. The State alleged that on December 5, 2012, the victim Regina Erogbogbo found defendant in her apartment going through her dresser drawer, and recognized defendant as her neighbor. She did not give him permission to enter her residence. After defendant left, she noticed she was missing a credit card, earrings, and a ring. Defendant was placed into custody at his residence.

¶ 4 In addition to the imposed prison sentence, the trial court credited defendant for 198 days of presentence custody and assessed a total of \$449 in fines, fees and costs which included, in part, a \$50 court system assessment; \$15 State Police Operations fee; \$5 electronic citation fee; \$2 Public Defender Records Automation fee; and a \$2 State's Attorney Records Automation fee.

¶ 5 Defendant did not move to withdraw his guilty plea or attempt to appeal. Instead, defendant filed a *pro se* petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)) alleging his plea of guilty was void because he did not receive the benefit of the bargain of his plea agreement with the State. The trial court dismissed defendant's petition. Defendant then filed a petition for rehearing which also included a motion to amend his original petition to include a motion to withdraw his guilty plea, which was also denied. On appeal from the trial

court's denial of his motion for rehearing, defendant has abandoned his other issues and for the first time challenges the fines and fees order.

¶ 6 Defendant argues the \$5 electronic citation fee should be vacated, and that defendant's \$5 per day incarceration credit should be applied against the \$50 court system assessment, \$15 State Police Operations fee, and the \$2 Public Defender and State's Attorney Records Automation fees, crediting defendant a total of \$74 in improperly applied fines and fees. The State concedes defendant's argument on all points except the \$2 Public Defender and State's Attorney Records Automation fees.

¶ 7 The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Elcock*, 396 Ill. App. 3d 524, 538 (2009). A challenge to court-ordered fines and fees presents a question of statutory interpretation; it constitutes an allegation that the sentence is void. See *Elcock*, 396 Ill. App. 3d at 538; *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 26. " 'It is a well-settled principle of law that a void order may be attacked at any time or in any court, either directly or collaterally.' " *People v. Ackerman*, 2014 IL App (3rd) 120585, ¶ 25 quoting *People v. Thompson*, 209 Ill. 2d 19, 25 (2004). 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").

¶ 8 We accept the State's concession that the \$5 electronic citation fee should be vacated because it is 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 State also agrees, and we accept, that defendant's presentence incarceration credit should be applied to the \$15 State Police Operations charge and the \$50 Court System assessment because they are fines, not fees. See *Millsap*, 2012 IL App (4th) 110668, ¶ 31; *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30.

¶ 9 The State maintains, however, that defendant's presentence incarceration credit is not applicable to offset the \$2 Public Defender Records Automation charge and the \$2 State's Attorney Records Automation charge because presentence incarceration credit only offsets fines and these particular charges are considered fees.

¶ 10 It is well-established that the presentence incarceration credit (725 ILCS 5/110-14(a) (West 2012)) applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006). 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 *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A charge may be a fine or fee regardless of the language used in the statute, depending on the particular attributes of the charge at issue. *Id.* In addition to the statutory language, "[o]ther 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.

¶ 11 Defendant argues 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. Section 4-2002(a) of the 2012 version of the Counties Code provides, in pertinent part:

"State's attorneys shall be entitled to a \$2 fee to be paid by the defendant on a judgment of guilty or a grant of supervision *** to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems." 55 ILCS 5/4-2002(a) (West 2012).

The plain language of the statute clearly demonstrates the legislature's intent that this assessment be used to reimburse the State's Attorney for expenses related to the automated record-keeping process, as a collateral function of the prosecutorial process. Because it is meant only to reimburse, it is also not punitive in nature. Therefore, this assessment is a fee. See *People v. Warren*, 2014 IL App (4th) 120721, ¶ 108; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30.

¶ 12 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).

¶ 13 Although defendant acknowledges our holding in *Rogers*, he requests that this court decline to follow the precedent set therein and determine that the above mentioned assessments

are fines and not fees. Defendant, however, does not argue that *Rogers* was wrongly decided or that defendant's case is distinguishable. Therefore, we decline to proceed as defendant requests and conclude that the Public Defender Records Automation charge and the State's Attorney Records Automation assessment are fines and not fees, and as such, defendant is not entitled to presentence incarceration credit against either.

¶ 14 In conclusion, we hereby vacate the \$5 electronic citation fee, and credit defendant's presentence incarceration time served against the \$15 State Police Operations fine and \$50 court system assessment, for a total amended fines and fees order of \$379. The circuit court's order is affirmed in all other respects, including with regard to the \$2 Public Defender Records Automation fee and the \$2 State's Attorney Records Automation fee.

¶ 15 Affirmed in part; vacated in part; fines and fees order modified.