

No. 1-14-0654

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 16233
)	
DONAMEEN JONES,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Neville concurred in the judgment.

O R D E R

¶ 1 *Held:* We correct the fines and fees order and affirm the judgment in all other respects.

¶ 2 Following a jury trial, defendant Donameen Jones was convicted of aggravated robbery and sentenced to six years' imprisonment. On appeal, defendant challenges certain fines and fees imposed by the trial court. We affirm as modified.

¶ 3 The evidence at trial established that on August 5, 2012, three men arranged to purchase laptop computers from defendant outside a restaurant in Chicago. Defendant tendered two objects consisting of wood and duct tape. One of the men refused to pay and saw defendant draw

a gun. The man surrendered \$250 and defendant was later arrested. At the close of trial, the jury found defendant guilty of aggravated robbery. The court ordered a presentence investigation report (PSI), and, in view of defendant's prior felony convictions from 1997, 2000, and 2004, sentenced him to six years' imprisonment as a Class X offender. The court also imposed fines and fees totaling \$824 and credited defendant for 494 days spent in presentence custody.

Defendant did not challenge the fines and fees order in the trial court.

¶ 4 On appeal, defendant contends that three fees were erroneously imposed against him and that he should be awarded monetary credit toward several other charges for time spent in presentence custody. Defendant also submits the trial court failed to assess a \$100 Violent Crime Victims Assistance (VCVA) fine and that his criminal surcharge fine should be recalculated in view of the corrected fines and fees.

¶ 5 We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60. A defendant incarcerated on aailable offense who does not supply bail and against whom a fine is levied is allowed a credit of \$5 for each day of presentence incarceration. 725 ILCS 5/110-14(a) (West 2012). A "fine" is punitive in nature and is imposed as part of a sentence on a person convicted of a criminal offense. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A "fee" is a charge that seeks to recoup expenses incurred by the State in prosecuting the defendant. *Id.* The legislature's label for a charge is strong evidence of whether the charge is a fee or a fine, but the most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant. *Id.*

¶ 6 Defendant first argues, and the State correctly concedes, that the \$250 state DNA identification system fee should be vacated because defendant's DNA was already in the Illinois

database as a result of his prior felony convictions. 730 ILCS 5/5-4-3(j) (West 2012); *People v. Marshall*, 242 Ill. 2d 285, 303 (2011) (fee authorized only where defendant is not currently registered in DNA database). The record on appeal shows that defendant was convicted of felonies in 1997, 2000, and 2004. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38 (to vacate DNA charge, defendant need only show he was convicted of a felony after DNA requirement went into effect on January 1, 1998). Accordingly, the \$250 state DNA identification system fee is vacated.

¶ 7 Defendant next argues, and the State correctly concedes, that the \$5 electronic citation fee should be vacated because the charge applies only to traffic, misdemeanor, municipal ordinance, and conservation cases and is inapplicable to his felony conviction for aggravated robbery. 705 ILCS 105/27.3e (West 2012); *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating fee where crime did not fall into an enumerated category). Accordingly, the \$5 electronic citation fee is vacated.

¶ 8 Defendant next asserts, and the State correctly concedes, that the \$5 court system fee should be vacated because the charge applies only to violations of the Illinois Vehicle Code or a similar provision, inapplicable to defendant's present conviction. 55 ILCS 5/5-1101(a) (West 2012); *People v. Brown*, 388 Ill. App. 3d 104, 112 (2009) (vacating fee where crime was not a violation of the Illinois Vehicle Code or similar provision). Accordingly, the \$5 court system fee is vacated.

¶ 9 Defendant further contends that five other charges imposed against him are actually fines and should be offset by monetary credit for his presentence incarceration. The State correctly concedes that two of these charges, namely, the \$50 court system fee and the \$15 state police

operations fee, are fines subject to offset. 55 ILCS 5/5-1101(c)(1) (West 2012); 705 ILCS 105/27.3a(1.5) (West 2012); *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 ("the court systems fee *** was actually a fine"); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 ("the State Police operations assistance fee is also a fine"). Accordingly, both charges should be offset by defendant's presentence incarceration credit.

¶ 10 Defendant also asserts the \$10 probation and court services operations fee constitutes a fine, but we disagree. In this case, the probation department prepared a PSI for use during defendant's sentencing hearing. Thus, this charge is compensatory because it reimburses the State for costs incurred as a result of prosecuting defendant and is not offset by defendant's presentence incarceration credit. 705 ILCS 105/27.3a(1.1) (West 2012); *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 37 (probation and court services operations charge constitutes fee).

¶ 11 We also find, contrary to defendant's argument, that neither the \$2 State's Attorney records automation fee nor the \$2 Public Defender records automation fee constitutes a fine. 55 ILCS 5/4-2002.1(c) (West 2012); 55 ILCS 5/3-4012 (West 2012). This court has found the State's Attorney fee "is not punitive in nature," but rather, is intended to reimburse expenses related to automated record-keeping systems. *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 107-09. Using the same reasoning, we find the Public Defender records automation charge is also a fee. *Bowen*, 2015 IL App (1st) 132046, ¶ 65 (due to similar statutory language, "both charges constitute fees"). Accordingly, neither records automation fee is offset by defendant's presentence incarceration credit.

¶ 12 Defendant next contends, and the State correctly concedes, that the trial court erred in not assessing a \$100 VCVA fine. 725 ILCS 240/10(b)(1) (West 2012) (imposing \$100 fine for any

felony conviction). The parties also correctly agree that defendant's criminal surcharge fine must be recalculated in view of the corrected fines and fees. 730 ILCS 5/5-9-1(c) (West 2012).

Accordingly, we impose a \$100 VCVA fine and order the trial court to recalculate defendant's criminal surcharge fine.

¶ 13 For the foregoing reasons, we vacate the \$250 state DNA identification system fee, the \$5 electronic citation fee, and the \$5 court system fee assessed against defendant. We find the \$50 court system fee and the \$15 state police operations fee are offset by defendant's monetary credit for presentence incarceration. We affirm the \$10 probation and court services operations fee, the \$2 State's Attorney records automation fee, and the \$2 Public Defender records automation fee, which are not subject to offset. We also impose a \$100 VCVA fine and order the trial court to recalculate defendant's criminal surcharge fine. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct the fines and fees order accordingly.

¶ 14 Affirmed as modified.