

No. 1-14-0242

**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).

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	12 CR 15260
	)	
	)	
MARCUS JONES,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE PIERCE delivered the judgment of the court.  
Justices Simon and Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* The armed habitual criminal statute is not facially unconstitutional. Defendant's fines and fees order is modified.

¶ 2 Following a bench trial, defendant Marcus Jones was convicted of being an armed habitual criminal (AHC) (720 ILCS 5/24-1.7(A) (West 2012)). On appeal, defendant argues the AHC statute is facially unconstitutional because it criminalizes both lawful and unlawful conduct. He also asks this court to correct the circuit court's fines and fees order and award him \$50 of presentence incarceration credit, and vacate his \$20 violent crime assistance fine. For the

following reasons, we affirm defendant's conviction but modify his fines and fees order.

¶ 3 BACKGROUND

¶ 4 Defendant is not challenging the sufficiency of the evidence in this case. Therefore, we recite only those facts relevant to the disposition of this appeal.

¶ 5 Defendant was charged with one count of AHC and multiple counts of aggravated unlawful use of a weapon (AUUW) for possessing a weapon without a valid firearm owner's identification (FOID) card. At trial, the evidence established that after police received a call about an armed man, officers went to the location indicated and saw defendant who matched the description. As police exited the vehicle to approach defendant, defendant fled on foot, tossing a gun to the ground. The loaded gun was recovered, inventoried and admitted into evidence at trial. The State also entered certified copies of defendant's prior conviction for possession of a controlled substance with intent to deliver and solicitation of murder at trial, as well as a certification from the Illinois State Police certifying that defendant had no FOID card.

¶ 6 At the conclusion of the evidence, defendant was found guilty as charged. The trial court merged the AUUW with the AHC charge. Defendant was sentenced to 12 years' imprisonment and was ordered to pay fines, fees and costs including a \$20 Violent Crime Victim Assistance (VCVA) Fund fee, a \$2 Public Defender Automation Records fee, a \$2 State's Attorney Automation Records fee and a \$50 court system fee. It is from this order that defendant now appeals.

¶ 7 ANALYSIS

¶ 8 Defendant first argues that the AHC statute is facially unconstitutional because it criminalizes both the lawful and unlawful possession of firearms. According to defendant, the

armed habitual criminal statute violates substantive due process because it “criminalizes wholly innocent conduct” and therefore violates due process. However, this same question was considered and rejected by this court in *People v. Johnson*, 2015 IL App (1st) 133663, where we stated:

“While it may be true that an individual could be twice-convicted of the offenses set forth in the armed habitual criminal statute and still receive a FOID card under certain unlikely circumstances, the invalidity of a statute in one particular set of circumstances is insufficient to prove that a statute is facially unconstitutional. See *M.T.*, 221 Ill.2d at 536–37. The armed habitual criminal statute was enacted to help protect the public from the threat of violence that arises when repeat offenders possess firearms. *People v. Davis*, 408 Ill.App.3d 747, 750 (2011). The Supreme Court explicitly noted in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that ‘nothing in our opinion [explaining the reach of the right to bear arms] should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.’ *Id.* See *Cates v. Cates*, 156 Ill.2d 76, 80 (1993) (judicial dicta should usually carry dispositive weight in an inferior court). Accordingly, we find that the potential invalidity of the armed habitual criminal statute in one very unlikely set of circumstances does not render the statute unconstitutional on its face.” *Id.* ¶ 27; see also *People v. Wallace*, 2015 IL App (1st) 140209-U; *People v. Fulton*, 2016 IL App (1st) 141765-U.

¶ 9 We find no reason to depart from the holding in *Johnson* and therefore reject defendant's contention that the AHC statute is facially unconstitutional for violating the due process clause.

¶ 10 Defendant next argues and the State agrees that defendant is entitled to preincarceration

credit towards the \$50 court system fee imposed in this case. See *People v. Smith*, 2013 IL App (2d) 120691, ¶21. As such, we award defendant a \$50 credit against the court system fee due to the time he spent in presentence incarceration.

¶ 11 Defendant next contends that he should be permitted to use his presentence custody credit to offset the \$2 Public Defender Records Automation fee and the \$2 State's Attorney Records Automation fee because, despite being labeled as fees, they are actually fines. The Public Defender Records Automation fee requires defendant to pay a \$2 assessment “to discharge the expenses of the Cook County Public Defender's office for establishing and maintaining automated record keeping systems.” 55 ILCS 5/3–4012 (West 2012). Likewise, the State's Attorney Records Automation fee requires a defendant to pay a \$2 assessment “to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems.” 55 ILCS 5/4–2002.1(c) (West 2012).

¶ 12 As the State points out, the Fourth District appellate court recently determined that the State's Attorney records automation assessment was compensatory in nature, and, therefore, a fee. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. The language of the statute for the Public Defender Records Automation fee is identical to the language of the statute for the State's Attorney Records Automation fee. It therefore logically follows that the Public Defender Records Automation fee is a fee in that it is intended to compensate the office of the public defender for costs incurred in defending defendant, and may not be offset by defendant's presentence custody credit. Accordingly, defendant is not entitled to presentence incarceration credit towards these fees.

¶ 13 Defendant next argues that the trial court improperly assessed a \$20 charge to be

contributed to the VCVA Fund pursuant to section 10(c)(2) of the Violent Crime Victims Assistance Act. 725 ILCS 240/10(c) (West 2012). Section 10(c) states in relevant part:

“(b) \* \* \* [T]here shall be an additional penalty collected from each defendant upon conviction of any felony or upon conviction of or disposition of supervision for any misdemeanor \* \* \* an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed. \* \* \*

(c) When any person is convicted in Illinois on or after August 28, 1986, of an offense listed below, or placed on supervision for such an offense on or after September 18, 1986, and no other fine is imposed, the following penalty shall be collected by the Circuit Court Clerk:

(2) \$20, for any other felony or misdemeanor, excluding any conservation offense. Such charge shall not be subject to the provisions of section 110–14 of the Code of Criminal Procedure of 1963 [725 ILCS 5/110–14].” (Emphasis added.) 725 ILCS 240/10 (West 2012).

¶ 14 Because the trial court assessed another fine against defendant in addition to the Violent Crime Victims Assistance Fund fine, the assessment of the VCVA fine under subsection (c), as imposed, was erroneous. 725 ILCS 240/10(c) (West 2012). We therefore vacate the \$20. However, we find that subsection (b) applies and therefore assess a VCVA fine of \$8 since defendant was charged with \$50 in fines. 725 ILCS 240/10(b) (West 2012); see also *People v. Jamison*, 229 Ill. 2d 184, 193 (2008).

¶ 15

CONCLUSION

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¶ 16 For the foregoing reasons, we affirm defendant's conviction and pursuant to Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to vacate the \$20 VCVA fine and correct defendant's fines and fees order to reflect the presentence incarceration credit toward the \$50 Court System Fee and to amend the fines and fees to reflect a \$8 VCVA Fund fee (725 ILCS 240/10(b) (West 2012)).

¶ 17 Affirmed; fines and fees ordered corrected.