2016 IL App (1st) 142565-U

FOURTH DIVISION
September 30, 2016

No. 1-14-2565

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 18499
	)	
LARRY DAVIS,	)	Honorable
	)	Carol M. Howard,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Two charges that were imposed against defendant as part of his conviction were erroneously assessed and are vacated. A portion of defendant's presentence custody credit is applied to two fines, thus reducing his total amount of fines and fees owed.

¶ 2 Following a bench trial, defendant Larry Davis was convicted of being an armed habitual criminal and unlawful use or possession of a weapon by a felon. Defendant was sentenced to seven years in prison and was assessed various fines and fees, which are the sole subject of his

contentions in this appeal. On appeal, defendant asserts that the $5 electronic citation fee and the $250 State DNA ID system fee were erroneously imposed in this case. He also argues that a portion of his monetary credit for time spent in custody should apply to several other assessments that he contends are fines. For the reasons set out below, we order that the fines and fees order in this case be corrected.

¶ 3 At trial, the State presented evidence that on September 20, 2012, defendant was arrested near 5932 West Madison Street in Chicago for possessing a weapon on a public street. The State presented certified copies of defendant's prior convictions under different names for possession of a controlled substance and burglary, and defense counsel stipulated to their authenticity. The State also presented evidence that defendant had never been issued a Firearm Owner's Identification card.

¶ 4 The mittimus indicates that defendant's conviction for being an armed habitual criminal is a Class X felony. The mittimus also indicates that defendant should receive credit for 666 days in custody. Defendant was assessed $649 in fines and fees.

¶ 5 On appeal, this court reviews the propriety of the trial court's imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 68. Although defendant did not raise a challenge to his fines and fees in the trial court, he correctly asserts that a reviewing court may review these charges and, if necessary, modify the trial court's order in this case without remand pursuant to Illinois Supreme Court Rule 615(b) (eff. Aug. 27, 1999). *Id*. ¶ 60.

¶ 6 Defendant first asserts, and the State agrees, that two charges were erroneously imposed against him: the $5 electronic citation fee (705 ILCS 105/27.3e (West 2012)) and the $250 State DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2012)). The statute setting out the $5 electronic citation fee specifies that charge only applies to a defendant in "any traffic, misdemeanor,

municipal ordinance or conservation case." 705 ILCS 105/27.3e (West 2012)). Here, defendant was convicted of a Class X felony, and thus that charge was improperly imposed. See *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. In addition, the $250 DNA analysis fee assessed against defendant is vacated because a defendant is only required to submit a DNA sample and pay the fee if he is not currently registered in the DNA database. See *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). Here, defendant has previous felony convictions that would have required a DNA sample to be taken. Accordingly, those two charges, which total $255, are vacated.

¶ 7 Defendant's remaining contentions involve the application of presentence custody credit to several other monetary assessments imposed against him. A defendant is entitled to a credit of $5 for each day he is incarcerated, with that amount to be put toward the fines levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2012). Here, defendant spent 666 days in custody and accordingly, has accumulated $3,330 worth of credit toward his eligible fees. After subtracting credit for several fines assessed against defendant that are not relevant to this appeal, the trial court assessed defendant $649 in total charges. We have vacated $255 of those fees. We next consider how much of defendant's ample presentence custody credit can be applied to the remaining $394 owed by defendant.

¶ 8 Before considering the individual charges challenged by defendant, we emphasize that the credit at issue here can be applied only to fines. Accordingly, we set out the difference between a "fine" and a "fee."

¶ 9 A "fine" is "punitive in nature" and is "a pecuniary punishment imposed as a part of a sentence on a person convicted of a criminal offense." (Internal quotations omitted.) *People v. Graves*, 235 Ill. 2d 244, 250 (2009), citing *People v. Jones*, 223 Ill. 2d 569, 581 (quoting *People*

v. White, 333 Ill. App. 3d 777, 781 (2002)). A "fee" is defined as "a charge that seeks to recoup expenses incurred by the state or to compensate the state for some expenditure incurred in prosecuting the defendant." (Internal quotations omitted.) *Graves*, 235 Ill. 2d at 250, citing *Jones*, 223 Ill. 2d at 582. "A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution." *Id*. at 600. The labeling of a charge as a "fee or a "fine" by the legislature is not dispositive, and the "most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant." *Graves*, 235 Ill. 2d at 250-51, citing *Jones*, 223 Ill. 2d at 600 (other factors include whether the charge is only imposed after a conviction and to whom the payment is made).

¶ 10 In this case, defendant argues, and the State correctly concedes, that two of the assessments that he challenges are fines that are subject to presentence custody credit. Those charges have been labeled by the legislature as "fees" but have been found to be, in fact, fines: a $15 State Police operations fee (705 ILCS 105/27.3a (1.5) (West 2012)) and a $50 Court System fee (55 ILCS 5/5-1101(c)(1) (West 2012)). See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 147 (State Police operations charge is a fine); *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (Court System charge is a fine). The Court System charge was found to be a fine because it was imposed upon conviction on every defendant found guilty of a felony, regardless of what transpired in the particular case, and because it did not compensate the State for prosecuting that defendant. *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17. See also *Graves*, 235 Ill. 2d at 253 (costs assessed under section 5-1101 of the Counties Code are "monetary penalties to be paid by a defendant" upon a judgment of guilty).

¶ 11 Defendant next asserts that his presentence custody credit should be applied to the $2 State's Attorney and $2 Public Defender records automation charges. The statute enacting the State's Attorney records automation charge indicates that amount is:

> "to be paid by the defendant on a judgment of guilty or a grant of supervision for a violation of any provision of the Illinois Vehicle Code or any felony, misdemeanor, or petty offense to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems. * * * Expenditures from this fund may be made by the State's Attorney for hardware, software, research, and development costs and personnel related thereto." 55 ILCS 5/4-2002.1(c) (West 2014).

¶ 12 The statute authorizing the $2 Public Defender records automation fee uses the same language as quoted above in regard to the Public Defender's office. 55 ILCS 5/3-4012 (West 2014).[1]

¶ 13 Defendant contends that those charges do not compensate those offices for any automated recordkeeping used in the prosecution of his case. However, several decisions of this court have held those charges are fees, as opposed to fines, and thus are not subject to being offset by defendant's presentence custody credit. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115; *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding "no reason to distinguish between the two statutes" given their nearly identical language and concluding that those charges are intended to reimburse those offices for expenses); see also *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17.

[1] Both of those statutes took effect several months before defendant committed this offense. See Public Act 97-673 (eff. June 1, 2012).

¶ 14 In *Warren*, the Fourth District noted that the State's Attorney records automation fee, as imposed by a parallel statute applicable to counties in Illinois other than Cook County, was not punitive in nature because it "is intended to reimburse the State's Attorneys for their expenses relating to automated record-keeping systems[.]" *Warren*, 2016 IL App (4th) 120721-B, ¶ 115. But see *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56 (State's Attorney and Public Defender records automation charges are fines because they do not compensate the State for costs associated in prosecuting a particular defendant). Although defendant asserts that *Warren* was wrongly decided, we agree with the analysis stated above that when a charge lacks a punitive aspect, it is a fee, as opposed to a fine.

¶ 15 Defendant next raises challenges to four additional charges assessed against him. He contends that the clerk's $15 automation charge (705 ILS 105/27.3a (1), (1.5) (West 2012)) and the $15 document storage charge (705 ILCS 105/27.3c (a) (West 2012)) constitute fines, not fees, because they do not relate to the costs incurred in his prosecution.

¶ 16 Defendant also argues that the $190 charge imposed for filing a felony complaint (705 ILCS 27.2a (w)(1)(A) (West 2012)) is a fine because it sits atop a scale of similar assessments based on the severity of the offense and is meant to reimburse the clerk for its expanses. See 705 ILCS 105/27.2a (w)(1)(A)-(K) (West 2012). He thus argues the felony complaint filing charge is not related to the actual expenses of his prosecution, citing *People v. Smith*, 2013 IL App (2d) 120691, ¶¶ 17-21. Likewise, defendant asserts that the $25 Court Services (Sheriff) assessment (55 ILCS 5/5-1103 (West 2012)) is a fine because it helps to reimburse the sheriff for costs incurred in providing court services, and therefore funds a portion of the court system, as opposed to compensating the State for a cost incurred in his particular prosecution. He also points out that the money collected from those charges is paid to the clerk, not to the prosecution.

¶ 17 Similar to the analysis in *Warren*, this court addressed each of those assessments in *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), and held that those four assessments are fees because they are compensatory and represent "a collateral consequence" of a defendant's conviction. The automation and document storage charges help to fund the maintenance of those systems. *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 29-30.

¶ 18 As to the felony complaint charge, the assessment of $190 for the filing of a felony complaint is at the top of the range for felony complaints ($125 to $190) and is part of a sliding scale that is based on the type of filing (felony, misdemeanor, business offense, petty offense, minor traffic, court appearance required, different types of motions to vacate). See 705 ILCS 105/27.2a (w)(1)(A)-(K) (West 2012). Similarly, the statute authorizing the court services (sheriff) charge indicates that charge is assessed to defray court expenses. Those costs include the cost of the county sheriff in providing court security. See *People v. Pohl*, 2012 IL App (2d) 100629, ¶¶ 11-12 (finding that only one such fee can be imposed against a defendant in a particular case).

¶ 19 Defendant acknowledges *Tolliver* but points out that since that case was decided, the supreme court clarified in *Graves* that to be correctly designated as a fee, a charge must reimburse the State for a cost that was incurred in the defendant's prosecution. *Graves*, 235 Ill. 2d at 250. However, as we have stated above, those charges do represent a portion of the overall costs incurred to prosecute defendant. Furthermore, cases decided since *Graves* have found these four charges to be fees. See *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68 (felony complaint filing, clerk automation and document storage and court services (sheriff) assessment are fees); *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 25-31; *Martino*, 2012 IL App (2d) 101244, ¶¶ 29-38 (same).

¶ 20 The fact that such charges are not tailored to each defendant's individual case does not negate that they compensate the State, in some part, for the costs incurred. See *Graves*, 235 Ill. 2d at 250 (a fee recovers the State's costs, *in whole or in any part*, for prosecuting the defendant); compare *People v. Jernigan*, 2014 IL App (4th) 130524, ¶ 37-38 (a $10 charge for "medical costs" (730 ILCS 125/17 (West 2012)) is a fine because it is assessed regardless of whether the defendant received any medical treatment). Moreover, the collection of the money via the clerk's office or the fact that a charge is payable to the county is not dispositive, because the clerk of a court, not the prosecutor, is authorized to collect fines and costs imposed by the judiciary. See 730 ILCS 5/5-9-1(c) (West 2012)); *People v. Swank*, 344 Ill. App. 3d 738, 748 (2003).

¶ 21 Though defendant acknowledges that a dissent does not represent binding authority, he cites to the dissent in *People v. Breeden*, 2014 IL App (4th) 121049, ¶¶ 121-52 (Appleton, P.J., concurring in part and dissenting in part), opinion vacated in light of *People v. Castleberry*, No. 118880 (Jan. 20, 2016), which concluded that those charges are fines. The dissent in *Breeden* found that the felony complaint filing assessment, the clerk's automation and document storage assessments, and the court services (sheriff) assessment, as assessed under similar statutes in other Illinois jurisdictions, are fines. *Id*. The dissent reasoned that the charges are meant to finance the operations of the clerk of the circuit court and other parts of the court system and do not compensate the State for the expense of prosecuting a defendant. *Id*.

¶ 22 While we recognize that contrary view, for the reasons explained above, we find that the charges set out above are fees, as opposed to fines. Therefore, defendant is not entitled to apply his presentence custody credit to those charges.

¶ 23 In conclusion, the $5 electronic citation fee and the $250 State DNA ID system fee imposed against defendant are vacated. Accordingly, defendant thus owes a total of $394 in

fines and fees, as opposed to the $649 ordered by the trial court. Furthermore, defendant is entitled to have two fines, the $15 State Police operations fee and the $50 Court System fee, offset by a portion of his presentence incarceration credit. Applying that offset, the $394 amount owed by defendant is reduced by another $65 to $329.

¶ 24 Pursuant to Supreme Court Rule 615(b)(1), we correct the fines and fees order to reflect a total amount due of $329. The judgment of the trial court is affirmed in all other respects.

¶ 25 Affirmed in part; vacated in part; fines and fees order corrected.