

No. 1-14-2880

**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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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 19295
	)	
ARMONI ALLEN,	)	Honorable
	)	Luciano Panici,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Connors and Justice Simon concurred in the judgment.

**O R D E R**

¶ 1 *Held:* We modify the mittimus to fully credit defendant for days in presentence custody, and correct the fines and fees order. Judgment affirmed in all other respects.

¶ 2 Following a jury trial, defendant Armoni Allen was convicted of aggravated battery with a firearm and attempted armed robbery and sentenced to consecutive prison terms of 25 years and 10 years, respectively. On appeal, defendant (1) contends that he is entitled to additional

presentence custody credit, and (2) challenges certain fines and fees imposed by the trial court.

We affirm as modified.

¶ 3 Defendant was charged, in pertinent part, with attempted first-degree murder, aggravated battery with a firearm, and attempted armed robbery. The evidence at trial established that, on September 29, 2010, defendant and two codefendants attempted to rob a gas station in Chicago Heights and one of the codefendants shot a gas station employee in the arm and chest.<sup>1</sup> The jury found defendant guilty of aggravated battery with a firearm and attempted armed robbery. The trial court imposed prison terms of 25 years and 10 years, respectively, to be served consecutively based on its finding of severe bodily harm to the victim. The court stated that defendant would be credited for 1,442 days of presentence custody, although the mittimus credited defendant for 1,142 days. Additionally, the court imposed fines and fees totaling \$649.

¶ 4 Defendant raises two issues on appeal.

¶ 5 First, defendant contends, and the State correctly concedes, that his mittimus must be corrected to reflect additional days of presentence custody credit. Defendant did not raise this issue in the trial court, but presentence custody credit is "mandatory" and, therefore, "such a claim of error cannot be waived." *People v. Anderson*, 2012 IL App (1st) 103288, ¶ 35. A defendant is entitled to credit for any part of a day he spent in custody up to, but not including, the day of sentencing. 730 ILCS 5/5-4.5-100(b) (West 2014); *People v. Williams*, 239 Ill. 2d 503, 510 (2011). "Whether a defendant should receive presentence custody credit against his sentence is reviewed under the *de novo* standard of review." *People v. Jones*, 2015 IL App (4th) 130711, ¶ 12.

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<sup>1</sup> Neither codefendant is party to this appeal.

¶ 6 The record establishes that defendant was arrested on September 30, 2010, and remained in custody until sentencing on August 21, 2014, a total of 1,421 days excluding the date of sentencing. However, the mittimus credited defendant for 1,142 days. Therefore, we direct the clerk of the circuit court to correct defendant's mittimus to reflect 1,421 days of presentence custody credit. Ill. S. Ct. 615(b)(1) (eff. Aug. 27, 1999) (a reviewing court may “modify the judgment or order from which the appeal is taken”).

¶ 7 Next, defendant contends that the trial court imposed certain fines and fees in error and that other charges should be offset by presentence credit. Although defendant has forfeited review of his fines and fees claim because he did not challenge the order in a "contemporaneous objection and a written postsentencing motion" (*People v. Hillier*, 237 Ill. 2d 539, 544 (2010)), on appeal a reviewing court may modify the fines and fees order without remanding the case back to the trial court. Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999). Consequently, we need not consider defendant's alternate theories of plain error or ineffective assistance of counsel. "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.

¶ 8 Defendant first argues, and the State correctly concedes, that the \$5 electronic citation fee must be vacated because it applies only to traffic, misdemeanor, municipal ordinance, and conservation cases, and is inapplicable to defendant's felony convictions for aggravated battery with a firearm and attempted armed robbery. 705 ILCS 105/27.3e (West 2014); *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating the \$5 electronic citation fee where the defendant's offense did not fall into an enumerated category). Accordingly, we vacate the \$5 electronic citation fee.

¶ 9 Defendant next argues, and the State correctly concedes, that his \$50 court system fee and \$15 State Police operations fee should be offset by presentence credit. Defendant did not raise this issue in the trial court, but "the statutory right to a *per diem* credit is conferred in mandatory terms while being subject to a defendant's application," and therefore, "the right is cognizable on appeal as a matter of course." *People v. Woodard*, 175 Ill. 2d 435, 457 (1997). A defendant incarcerated on a bailable offense who does not supply bail and against whom a fine is levied is allowed a credit of \$5 for each day of presentence custody. 725 ILCS 5/110-14(a) (West 2014). A "fine" is punitive in nature and is imposed as part of a sentence for a criminal offense. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A fee, in contrast, seeks to recoup expenses incurred by the state, or to compensate the state for expenditures incurred in prosecuting the defendant. *Id.* The presentence custody credit applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006).

¶ 10 We agree with the parties that 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 2014); 705 ILCS 105/27.3a(1.5) (West Supp. 2013); *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 141 ("the state [police] operations charge under section 27.3a(1.5) is a fine"); *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30 ("the court systems fee \*\*\* was actually a fine"). Accordingly, both charges must be offset by defendant's presentence incarceration credit.

¶ 11 Finally, defendant contends that the \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2014)) and the \$2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)) constitute fines that should be vacated for violating *ex post facto* principles, as both charges were enacted after September 29, 2010, the date defendant's offenses occurred. See Pub. Act 97-673, § 5 (eff. June 1, 2012) (adding 55 ILCS 5/3-4012 and 55 ILCS

5/4-2002). Alternatively, defendant argues that both charges should be offset by presentence credit. The State maintains that both charges are fees and, therefore, are neither subject to the prohibition against *ex post facto* laws nor offset by presentence credit.

¶ 12 We find the State's position to be correct. "The prohibition against *ex post facto* laws applies only to laws that are punitive," and "does not apply to fees, which are compensatory instead of punitive." *People v. Dalton*, 406 Ill. App. 3d 158, 163 (2010). In *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115, this court held that the State's Attorney assessment "is intended to reimburse," and therefore, "is not punitive in nature." Moreover, "because the statutory language of both the Public Defender and State's Attorney Records Automation fees is identical except for the name of the organization," there is "no reason to distinguish between the two statutes," and therefore, "both charges constitute fees." *Bowen*, 2015 IL App (1st) 132046, ¶ 65; see also *Maxey*, 2016 IL App (1st) 130698, ¶ 144; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; see *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56 (rejecting *Warren*). Accordingly, neither records automation fee violates the prohibition against *ex post facto* laws, nor is offset by presentence credit.

¶ 13 Notwithstanding, the parties agree, correctly, that the \$2 public defender records automation fee must be vacated because the record shows that defendant was represented by private counsel at all times in the trial court. See 55 ILCS 5/3-4012 (West 2014) (mandating "a \$2 fee to be paid by the defendant on a judgment of guilty \*\*\* to discharge the expenses of the Cook County Public Defender's office for establishing and maintaining automated record keeping systems"). Accordingly, we vacate the \$2 public defender records automation fee.

¶ 14 For the foregoing reasons, we modify defendant's mittimus to reflect 1,421 days of presentence credit, vacate the \$5 electronic citation fee and \$2 public defender records automation fee, and find that the \$50 court system fee and \$15 State Police operations fee are offset by defendant's presentence credit. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct the mittimus and fines and fees order accordingly. We affirm the judgment in all other respects.

¶ 15 Affirmed as modified.