2017 IL App (1st) 143774-U

No. 1-14-3774

Order filed November 22, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 22719
	)	
NANNETTE MELTON,	)	Honorable
	)	Rickey Jones,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's fines and fees order amended to vacate improper fees and apply presentencing monetary credit.

¶ 2 Following a bench trial, defendant Nannette Melton was convicted of one count of possession of a controlled substance and sentenced to one year in prison. The trial court also assessed defendant several fines, fees, and court costs totaling $1,049. On appeal, defendant does not challenge her conviction or sentence, but contends that two fees were improperly assessed

and should be vacated. Defendant also argues that monetary credit for the days she spent in presentencing custody should be applied against several of the assessments. We modify defendant's fines and fees order.

¶ 3 Because defendant raises no challenge to her conviction or sentence, we need not discuss the details of the evidence presented at trial or the other proceedings below. Defendant was charged with five counts of possession of a controlled substance with intent to deliver various amounts of heroin and methylenedioxypyrovalerone (MDPV). The trial court found defendant guilty of the lesser included offense of possession of a controlled substance. The court subsequently sentenced defendant to one year in prison and awarded her 264 days of credit for time served in presentencing custody. The court also assessed defendant $1,049 for various fines, fees and court costs.

¶ 4 On appeal, defendant argues that two fees were improperly assessed and should be vacated. She also argues that monetary credit for the days she spent in presentencing custody should be applied against several assessments, which she claims are fines.

¶ 5 Defendant acknowledges that she did not preserve this issue for appeal because she did not challenge the assessments in the trial court. She urges this court to review her assessments under either the plain-error doctrine or Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999).

¶ 6 A defendant's claims for *per diem* monetary credit cannot be forfeited; a defendant may raise them any stage of the proceedings, including for the first time on appeal. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008); *People v. Woodard*, 175 Ill. 2d 435, 457–58 (1997). The propriety of the imposition of fines and fees is a question of law we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 7 We agree with the parties that, pursuant to section 110-14 of the Code of Criminal Procedure (725 ILCS 5/110-14 (West 2012)), defendant is entitled to have the $5 per day presentence incarceration credit applied against her fines. Defendant spent 264 days in presentence custody, and is therefore entitled to a maximum credit of $1,320.

¶ 8 The parties agree that defendant is due full credit against the following fines: the $500 Controlled Substance Fine (720 ILCS 570/411.2(a) (West 2012)), the $30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2012)), the $10 Mental Health Court fine (55 ILCS 5/5-1101(d-5) (West 2012)), the $5 Youth Diversion/Peer Court fine (55 ILCS 5/5-1101(e) (West 2012)), and the $5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2012)). Accordingly, we direct the clerk of the circuit court to apply a credit of $550 to offset these fines.

¶ 9 The parties also agree that defendant is due full credit for the $50 Court System Fee (55 ILCS 5/5-1101(c) (West 2012)) and the $15 State Police Operations Fee (705 ILCS 105/27.3a(1.5) (West 2012)). Both parties point out that, although these two charges are labeled fees, this court previously held that they are fines capable of being offset by sentencing credit because they do not compensate the State for expenses incurred in the prosecution of a defendant. *People v. Wynn*, 2013 IL App (2d) 120575, ¶¶ 13, 17. We thus direct the clerk of the circuit court to amend the fines, fees and costs order to reflect a $50 credit for the Court System Fee and a $15 credit for the State Police Operations Fee.

¶ 10 Defendant next contends that she is entitled to credit against the $2 State's Attorney Records Automation fee assessed pursuant to section 4-2002(a) of the Code (55 ILCS 5/4-2002(a) (West 2012)). Defendant points out that the assessment applies to all defendants who are found guilty of an offense, and that the purpose of the assessment is to discharge the expenses

associated with establishing and maintaining an automated record keeping system. She argues that the assessment does not compensate the State for prosecuting a particular defendant, and thus constitutes a fine rather than a fee.

¶ 11 The credit under section 110-14 can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee, we consider the nature of the assessment, not its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Our supreme court has defined a "fine" as "punitive in nature" and "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *Id.* A "fee," on the other hand, is "a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *Id.* (quoting *Jones*, 223 Ill. 2d at 582).

¶ 12 This court has repeatedly found that the $2 State's Attorney Records Automation fee is compensatory in nature, as it reimburses the State for its expenses related to maintaining its automated record-keeping systems. *Reed*, 2016 IL App (1st) 140498, ¶ 16; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30. In *Reed*, we explained that the State's Attorney's Office would have utilized its automated record-keeping systems in prosecuting the defendant when it filed charges with the clerk's office and made copies of discovery that were tendered to the defense. *Reed*, 2016 IL App (1st) 140498, ¶ 16. Consequently, we concluded that the assessment is a fee, not a fine, and is not subject to offset by the *per diem* credit. *Id.*; *Green*, 2016 IL App (1st) 134011, ¶ 46; *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *Rogers*, 2014 IL App (4th) 121088, ¶ 30.

¶ 13 We recognize that, in *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, this court held that the State's Attorney Records Automation fee was more properly characterized as a fine, because it does not compensate the State for the costs associated with prosecuting a particular defendant. Looking to the language of the statute, the Second Division found that it had "a prospective purpose intended to fund the technological advancement of *** the State's Attorney's *** office[ ], namely the establishment and maintenance of automated record keeping systems." *Id.* ¶ 50.

¶ 14 Several decisions have since disagreed with *Camacho* and followed the weight of authority in holding that the State's Attorney Records Automation fee is, in fact, a fee. See *People v. Brown*, 2017 IL App (1st) 142877, ¶ 76; *People v. Glover*, 2017 IL App (4th) 160586, ¶ 55; *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 22.

¶ 15 We agree with the holdings in *Reed*, *Green*, *Bowen*, and *Rogers*, as well as the cases that declined to follow *Camacho*, and hold that the State's Attorney Records Automation fee is a fee, not a fine. The statute provides that the fee must be used "for establishing and maintaining automated record keeping systems." 55 ILCS 5/4-2002.1(c) (West 2012). Every prosecution, including the prosecution of defendant in this case, requires the use of record-keeping systems. Although the fee charged defendant will be used to maintain the system so that it can be used in future prosecutions, defendant's prosecution required its use. Thus, we find that the fee's purpose is compensatory rather than punitive.

¶ 16 Finally, defendant contends that she is entitled to credit against the $15 Automation fee assessed pursuant to section 27.3a(1) of the Clerks of Court Act (705 ILCS 105/27.3a(1) (West 2012)) and the $15 Document Storage fee assessed pursuant to section 27.3c of the Act (705

ILCS 105/27.3c (West 2012)). Defendant argues that these assessments are fines rather than fees, because they do not reimburse the State for the costs incurred in prosecuting defendant but, instead, finance a component of the court system for general costs of litigation.

¶ 17 Defendant acknowledges that in *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that these assessments are fees, not fines, because they are compensatory in nature and are a collateral consequence of a defendant's conviction. Defendant asserts, however, that *Tolliver* predates *Graves* and is contrary to *Graves*, which held that a fee must reimburse the State for some cost incurred in prosecuting the defendant.

¶ 18 The analysis in *Tolliver* is not contrary to *Graves*. *Graves* states that, when determining whether a charge is a fine or a fee, "the most important factor is whether the charge seeks to compensate the state for *any costs incurred* as the result of prosecuting the defendant." (Emphasis added.) *Graves*, 235 Ill. 2d at 250. Quoting *Jones*, *Graves* further provides " '[t]his is the *central* characteristic which separates a fee from a fine. A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution. [Citations.]' " (Emphasis in original.) *Id.* (quoting *Jones*, 223 Ill. 2d at 600). Similarly, *Tolliver* states that a fee is "a charge for labor or services, and is a collateral consequence of the conviction which is not punitive, but instead, compensatory in nature." *Tolliver*, 363 Ill. App. 3d at 97. Thus, both *Graves* and *Tolliver* applied the same reasoning—that fees compensate for part of the overall costs incurred in the prosecution of a defendant.

¶ 19 Section 27.3a(1) of the Act states that Automation fee provides for "[t]he expense of establishing and maintaining automated record keeping systems in the offices of the clerks of the circuit court." 705 ILCS 105/27.3a(1) (West 2012). Section 27.3c of the Act states that the

Document Storage fee provides for "[t]he expense of establishing and maintaining a document storage system in the offices of the circuit court clerks." 705 ILCS 105/27.3c (West 2012).

¶ 20 During the prosecution of every defendant, automated records of the entire process are maintained by the clerk's office. In addition, numerous documents, including charging instruments, motions and orders, are stored in the court files, which are also maintained by the clerk's office. The Automation fee and the Document Storage fee compensate the clerk's office for the costs associated with maintaining these systems which are necessary to the process of prosecuting a defendant. Accordingly, we adhere to our reasoning in *Tolliver*, which is consistent with *Graves*, and find that these assessments are fees that compensate for expenses incurred in the prosecution of a defendant. As such, defendant is not entitled to offset these fees with her presentencing custody credit. See also *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the automation and document storage fees are fees rather than fines).

¶ 21 Defendant also challenges the imposition of certain other fees. Acknowledging her forfeiture, she requests plain-error review. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). The erroneous imposition of a monetary assessment is reviewable under the second prong of the plain-error doctrine, as it involves the fundamental fairness and integrity of the judicial process. *People v. Lewis*, 234 Ill. 2d 32, 49 (2009).

¶ 22 Defendant first contends, and the State agrees, that the $5 Electronic Citation Fee assessed pursuant to section 27.3e of the Clerks of Courts Act (Act) (705 ILCS 105/27.3e (West 2012)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance, and conservation violations, and does not apply to defendant's felony offense. Pursuant to our

authority under Rule 615(b)(1), we direct the clerk of the circuit court to amend the fines, fees and costs order by vacating the $5 Electronic Citation Fee.

¶ 23 The parties also agree that the $2 Public Defender Records Automation fee assessed pursuant to section 3-4012 of the Counties Code (Code) (55 ILCS 5/3-4012 (West 2012)) should be vacated, as defendant was represented by private counsel, not the public defender. *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 30. We agree and direct the clerk of the circuit court to vacate the $2 Public Defender Records Automation fee.

¶ 24 In sum, we vacate the $5 Electronic Citation Fee and the $2 Public Defender Records Automation fee from the Fines, Fees and Costs order. We direct the clerk of the circuit court to further amend that order to reflect a credit of $615 to offset the $500 Controlled Substance Fine, the $30 Children's Advocacy Center fine, the $10 Mental Health Court fine, the $5 Youth Diversion/Peer Court fine, the $5 Drug Court fine, the $50 Court System Fee, and the $15 State Police Operations Fee. Defendant's adjusted total assessment should be $427. We affirm defendant's conviction and sentence in all other respects.

¶ 25 Affirmed as modified.