2017 IL App (1st) 150153-U

No. 1-15-0153

September 20, 2017

Third 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. 13 CR 17374
	)	
MICHAEL LANDERS,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The fines, fees and costs order is modified.

¶ 2 Following a bench trial, defendant Michael Landers was convicted of vehicular hijacking (720 ILCS 5/18-3(a) (West 2012)), unlawful vehicular invasion (720 ILCS 5/18-6(a) (West 2012)), robbery (720 ILCS 5/18-1(a) (West 2012)), and aggravated battery (720 ILCS 5/12-3.05(c) (West 2012)). The trial court merged the unlawful vehicular invasion count into the vehicular hijacking count and sentenced defendant to, respectively, six, four, and three years in

prison on the remaining counts, to be served concurrently. On appeal, defendant challenges certain assessed fines and fees. For the reasons below, we order modification of the fines, fees, and costs order.

¶ 3 Defendant's conviction arose from an incident that took place during the early morning hours of August 16, 2013. At trial, Daniel Johnson, testified that, at about 2:20 a.m. that morning, codefendant Tony Landers, who is not a party to this appeal, pulled him out of his car. Defendant and Tony Landers then hit, kicked, and "knocked [him] unconscious." When Johnson regained consciousness, his car, cellular phone, and money were gone. Shortly after speaking to Johnson at the scene, Officer Galligan located Johnson's vehicle and found Tony Landers sitting in the driver's seat. Defendant was apprehended and Johnson identified him as one of his attackers. The trial court found defendant guilty of vehicular hijacking, unlawful vehicular invasion, robbery, and aggravated battery. It merged the unlawful vehicular invasion count into the vehicular hijacking count and sentenced defendant to six, four, and three years in prison, respectively, on the remaining counts, to be served concurrently. The court stated that defendant would be credited for 452 days of presentence custody credit and that he would be assessed mandatory fees and costs in the amount of $724.

¶ 4 Defendant contends on appeal that the assessed fines, fees, and costs should be reduced to $85 because (1) certain charges were erroneously imposed, (2) the fines charged against him should have been offset by his presentence custody credit, and (3) certain assessments labeled as "fees" are actually "fines" and should be offset by his presentence custody credit. Defendant also asserts, and the State agrees, that the fines, fees, and costs order incorrectly provides that the total amount of fines and fees imposed on him was $449. At sentencing, the trial court orally

pronounced that defendant would be assessed costs in the amount of $724. See *People v. Jones*, 376 Ill. App. 3d 372, 395 (2007) (oral pronouncement from the trial court controls). From our review of the fines, fees, and costs order, it appears that the total amount of fines, fees, and costs imposed on defendant was $724.

¶ 5 Initially, defendant did not raise his challenge to the assessed fines, fees, and costs in the trial court but requests that we review it under the plain error doctrine. Alternatively, defendant argues that his trial counsel was ineffective for not objecting to the fines and fees that were erroneously imposed. A sentencing error may affect a defendant's substantial rights, so we may review it for plain error. *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 20. Further, the State does not argue forfeiture in its brief, and has therefore forfeited any forfeiture argument. *See People v. Whitfield*, 228 Ill. 2d 502, 509 (2007) (if the State does not argue forfeiture, the State may forfeit its argument that an issue raised by defendant was forfeited). On appeal, the reviewing court may modify the fines and fees order without remanding the case back to the circuit court. Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967). The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 6 Defendant first contends, and the State correctly concedes, that we should vacate the $250 DNA analysis fee (730 ILCS 5/5-4-3(j) (West 2014)), the $5 electronic citation fee (705 ILCS 105/27.3e (West 2014)), and the $20 probable cause hearing fee (55 ILCS 5/4-2002.1(a) (West 2014)).

¶ 7 First, the DNA analysis fee may not be assessed on a defendant who has previously submitted a DNA sample based on a prior conviction. *People v. Marshall*, 242 Ill. 2d 285, 297, 301-02 (2011). When a defendant has been convicted of prior felonies after January 1, 1998, the

date the DNA requirement was effective, we presume this mandatory requirement was imposed on a defendant following at least one of the prior convictions. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38. Here, the record indicates that, on December 28, 2010, in case No. 10 CR 1461001, defendant was convicted of the offense of possession of a controlled substance, a Class IV felony. Accordingly, we presume that defendant has already submitted his DNA, and we vacate the $250 DNA analysis fee.

¶ 8 Second, section 105/27.3e of the Clerk of Courts Act provides that the circuit court clerk may collect an electronic citation fee in "any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty or grant of supervision." 705 ILCS 105/27.3e (West 2014). However, the electronic citation fee does not apply if a defendant has been convicted of a felony. *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. Here, defendant was convicted of vehicular hijacking, unlawful vehicular invasion, robbery, and aggravated battery, all of which are felonies. 720 ILCS 5/18-3(b) (West 2014); 720 ILCS 5/18-6(b) (West 2014); 720 ILCS 5/18-1(c) (West 2014); 720 ILCS 5/12-3.05(h) (West 2012). Therefore, we vacate the $5 electronic citation fee.

¶ 9 Third, section 5/4-2002.1(a) of the Counties Code provides that the State's attorneys shall be entitled to a $20 fee "[f]or preliminary examinations for each defendant held to bail or recognizance." 55 ILCS 5/4-2002.1(a) (West 2014). Here, the State charged defendant by indictment and did not hold a probable cause hearing. When a defendant is charged by indictment and a probable cause hearing was not held, a defendant cannot be assessed a "preliminary examination" fee. *People v. Smith*, 236 Ill. 2d 162, 174 (2010). Therefore, we vacate the $20 probable cause hearing fee.

¶ 10 Defendant next contends that the fines charged against him should be offset by his presentence custody credit. Pursuant to section 110-14(a) of the Code of Criminal Procedure, defendant is entitled to a credit of $5 toward his fines for each day he was incarcerated prior to his sentencing. 725 ILCS 5/110-14(a) (West 2014). The mittimus and fines, fees, and costs order provides that defendant served 452 days in presentence custody, and therefore, he is entitled to $2260 in presentence custody credit.

¶ 11 "The plain language of this statute indicates that the credit applies only to 'fines' that are imposed pursuant to a conviction, not to any other court costs or fees." *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). A "fine" is considered to be "part of the punishment for a conviction," and a "fee" is imposed to "recoup expenses incurred by the state—to 'compensat[e]' the state for some expenditure incurred in prosecuting the defendant." *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Even when the statute provides that a charge is a "fee," it still may be considered a "fine." *Jones*, 223 Ill. 2d at 599. When determining whether a charge is considered a fine or a fee, the "legislature's label is strong evidence, but it cannot overcome the actual attributes of the charge." *Id.* "[T]he most important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant." *People v. Graves*, 235 Ill. 2d 244, 250 (2009). "This is the central characteristic which separates a fee from a fine." *Jones*, 223 Ill. 2d at 600. Additional factors include "whether the charge is only imposed after conviction and to whom the payment is made." *Graves*, 235 Ill. 2d at 251.

¶ 12 Defendant first contends, and the State correctly concedes, that he is entitled to a credit of $5 for each day he spent in presentence custody to be applied against the following assessments: $10 mental health court (55 ILCS 5/5-1101(d-5) (West 2014)), the $5 youth diversion/peer court

(55 ILCS 5/5-1101(e) (West 2014)), the $5 drug court (55 ILCS 5/5-1101(f) (West 2014)), and the $30 Children's Advocacy Center (55 ILCS 5/5-1101(f-5) (West 2014)).

¶ 13 We agree with the parties that these four fees are considered "fines." *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 18 ("The drug-court fee is considered a fine because it is not intended to reimburse the State for costs incurred in prosecuting the defendant."); *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009) (finding that the $30 Children's Advocacy Center charge is a "fine"); *People v. Paige*, 378 Ill. App. 3d 95, 102 (2007) (finding that the mental health court and the youth diversion/peer court charges are "properly characterized as 'fines' " and stating, "the $10 mental health court charge and the $5 youth diversion/peer court charge may each properly be viewed as a criminal penalty or pecuniary punishment"). Because these assessments are fines, defendant is entitled to receive presentence custody credit against them. The fines, fees, and costs order does not reflect that he received presentence custody credit toward these assessments. Thus, we order the clerk of the circuit court to award defendant $5 per day of presentence custody credit toward the $10 mental health court, the $5 youth diversion/peer court, the $5 drug court, and the $30 Children's Advocacy Center assessments.

¶ 14 Defendant next contends that eight of the other charges assessed against him should be offset by his presentence custody credit because these assessments are legally considered "fines." These assessments include the $15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)), the $50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2014)), the $2 public defender records automation fee (55 ILCS 5/3-4012 (West 2014)), the $2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)), the $15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), the $15 automation fee (705 ILCS 105/27.3a(1) (West 2014)), the

$190 "Felony Complaint Filed (Clerk)" fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), and the $25 court services (sheriff) fee (55 ILCS 5/5-1103 (West 2014)).[1] The State concedes that two of these charges, the State Police operations fee and the court system fee, are considered fines and that defendant is entitled to presentence custody credit toward them. However, the State argues that the other assessments are fees.

¶ 15 First, we agree with the parties that the $15 State Police operations fee and the $50 court system fee are considered "fines" because they do not reimburse the State for the costs incurred to prosecute defendant. *People v. Milsap*, 2012 IL App (4th) 110668, ¶ 31 ("we find that the State Police Operations Assistance fee does not reimburse the State for costs incurred in defendant's prosecution"); *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21-22 (where the reviewing court awarded the defendant credit for the court system fee, noting, "the assessment is not intended or geared to compensate the State (or the county) for the cost of prosecuting a defendant."). Therefore, we order the clerk of the circuit court to award $5 per day of presentence custody credit toward the $15 State Police operations and the $50 court system assessments.

¶ 16 We now address the assessments that defendant contends are considered "fines" but the State maintains are considered "fees," namely, the $2 public defender records automation fee, the $2 State's Attorney records automation fee, the $15 document storage fee, the $15 automation fee, the $190 "Felony Complaint Filed (Clerk)" fee, and the $25 court services fee.[2]

[1] As defendant correctly points out, the fines, fees and costs order provides that the section in the Counties Code authorizing the $2 State's Attorney records automation fee is section 4-2002.1(a), but the section authorizing this assessment is actually contained in section 4-2002.1(c).

[2] This order will refer to the "Felony Complaint Filed (Clerk)" assessment as the "felony complaint filing" fee.

¶ 17 First, defendant argues that the $2 public defender records automation and the $2 State's Attorney records automation assessments are considered "fees" because they do not reimburse the state for costs associated with prosecuting defendant. The State asserts that the assessments are intended to compensate the state and the public defender's office for the costs of prosecuting and defending defendant by offsetting the costs of establishing and maintaining the automated record keeping systems.

¶ 18 In *People v. Brown*, 2017 IL App (1st) 142877, ¶¶ 76, 78, this court concluded that the $2 public defender's records automation and the $2 State's Attorney records automation charges are considered fees that cannot be offset by presentence custody credit. We acknowledge the decision in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, where this court concluded that these assessments are "fines." However, we will follow *Brown* and conclude that the $2 public defender's records automation and $2 State's Attorney records automation are fees. See *Brown*, 2017 IL App (1st) 142877, ¶¶ 76, 78 ("we will follow the weight of authority that holds that the State's Attorney records automation fee is indeed a fee"). Thus, defendant is not entitled to presentence custody credit toward these charges.

¶ 19 Defendant next argues that the $15 document storage fee and the $15 automation fee are considered "fines" because they do not compensate the state for the costs incurred as a "result" of prosecuting defendant. Defendant acknowledges that cases have referred to these assessments as fees but asserts that these cases did not conduct an analysis to determine "*whether*" these assessments were fines. The State maintains that these assessments are fees and cites *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), where this court held that the document storage and automation assessments were fees because "these charges are compensatory and a collateral

consequence of defendant's conviction." Defendant argues that *Tolliver* is not persuasive because it was decided three years before the supreme court issued *Graves*. In *Graves*, the supreme court stated, " 'A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution.' " *Graves*, 235 Ill. 2d at 250 (quoting *Jones*, 223 Ill. 2d at 600). We find that *Tolliver* is consistent with *Graves* given its holding that the charges were a "collateral consequence" of the defendant's conviction (*Tolliver*, 363 Ill. App. 3d at 97), and thus, are necessarily costs incurred by the state in order to prosecute a particular defendant, as required in *Graves* (*Graves*, 235 Ill. 2d at 250). Therefore, we conclude the document storage and automation assessments are fees and not fines. *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (the automation and document storage assessments were considered fees); *Tolliver*, 363 Ill. App. 3d at 97. Defendant is not entitled to presentence custody credit to be applied against these assessments.

¶ 20 Defendant next argues that the $190 felony complaint filing fee is a "fine," as its purpose is to reimburse the clerk's office "as a whole" instead of reimbursing the costs incurred in prosecuting defendant. We disagree. Section 105/27.2 of the Clerks of Courts Act authorizes the clerks of the circuit court to collect, among other things, filing fees for civil and criminal cases. It states, in pertinent part, as follows: "(1) The clerk shall be entitled to costs in all criminal and quasi-criminal cases from each person convicted or sentenced to supervision therein as follows: (A) Felony complaints, a minimum of $125 and a maximum of $190." 705 ILCS 105/27.2a(w)(1)(A) (West 2014). In *Tolliver*, similar to the automation and document storage assessments discussed above, this court held that the filing of a felony complaint is a "fee" because it is a "collateral consequence of the conviction which is not punitive, but instead,

compensatory in nature." *Tolliver*, 363 Ill. App. 3d at 97. Accordingly, we conclude that the felony complaint filing assessment is a fee and not a fine. See *Jones*, 223 Ill. 2d at 581 (" 'A 'cost' is a charge or fee taxed by a court such as a filing fee, jury fee, courthouse fee, or reporter fee.' ") (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002))). Thus, defendant is not entitled to presentence custody credit to be applied against the felony complaint filing fee.

¶ 21 Defendant next argues that the $25 court services fee is a fine because it does not compensate the state for the costs of prosecuting defendant. The State asserts that the $25 assessment reimburses the county for a small portion of the costs of providing security in the courtroom and courthouse, which was provided to defendant and necessary for the court system. Section 5-1103 of the Counties Code, the statute authorizing this assessment, states, in part, as follows:

> "A county board may enact by ordinance or resolution a court services fee dedicated to defraying court security expenses incurred by the sheriff in providing court services or for any other court services deemed necessary by the sheriff to provide for court security *** In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon a plea of guilty*** The fees shall be collected in the manner in which all other court fees or costs are collected and shall be deposited into the county general fund for payment solely of costs incurred by the sheriff in providing court security or for any other court services deemed necessary by the sheriff to provide for court security." 55 ILCS 5/5-1103 (West 2014).

Accordingly, the language of the statute provides that the purpose of this assessment is to compensate the county for providing "court security expenses" or "any other court services

deemed necessary by the sheriff to provide for court security." The statute does not demonstrate a prospective intent to fund the establishment and maintenance of a court security system nor does the assessment amount vary depending on the severity of the offense, both of which provide support that it is a fee and not a fine. Further, court security services were necessarily used by the court to hold a trial and prosecute defendant. Thus, the use of the court's security services was a "collateral consequence" of defendant's prosecution and conviction. See *Tolliver*, 363 Ill. App. 3d at 97 (determining that the sheriff's court services assessment is a fee, as it is a "collateral consequence of defendant's conviction"). We conclude that the $25 sheriff's court services assessment is a fee, as it reimburses the county for costs incurred as a result of prosecuting defendant, and therefore, it is not subject to being offset by defendant's presentence custody credit.

¶ 22 For the reasons explained above, defendant is not entitled to presentence custody credit toward the $15 document storage fee, the $15 automation fee, the $190 felony complaint filing fee, the $25 court services fee, the $2 public defender records automation fee, or the $2 State's Attorney records automation fee. However, defendant is entitled to $5 per day of presentence credit toward the following assessments: the $10 mental health court fine, the $5 youth diversion/peer court fine, the $5 drug court fine, the $30 Children's Advocacy Center fine, the $15 State Police operations fee, and the $50 court system fee. We vacate the $250 DNA analysis fee, the $5 electronic citation fee, and the $20 probable cause hearing fee charged against defendant. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we order the clerk of the circuit court to modify the fines, fees, and costs order accordingly. See *People v.*

Bryant, 2016 IL App (1st) 140421, ¶¶ 22-23. The judgment of the circuit court is affirmed in all other respects.

¶ 23 Affirmed; fines, fees, and costs order modified.