

2017 IL App (1st) 150236-U

No. 1-15-0236

Order filed March 31, 2017

Sixth Division

**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 DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 19863
	)	
DION MASSEY,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE DELORT delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 **Held:** We affirm the judgment on defendant's conviction for aggravated discharge of a firearm, and reject his challenge that he is entitled to monetary credit against several assessments on the basis that they are fines rather than fees.

¶ 2 Following a bench trial, defendant Dion Massey was acquitted of attempted first degree murder, but found guilty of two counts of aggravated discharge of a firearm for shooting at Bianca Smith and her house. The trial court merged those two counts and sentenced defendant

to seven years' imprisonment. The court also assessed fines, fees and court costs totaling \$614 against defendant, and applied a credit of \$35 against the fines, leaving a balance of \$579.

¶ 3 On appeal, defendant argues only that he is entitled to have additional monetary credit for the days he spent in presentencing custody applied against several assessments that he claims are fines rather than fees. Because defendant does not challenge his conviction or sentence on any other basis, we omit discussion of the facts adduced at trial.

¶ 4 Defendant acknowledges that he did not preserve this issue for appeal because he did not challenge the assessments in the trial court. He urges this court, however, to review his assessments under the second prong of the plain error doctrine. Alternatively, he argues that his trial counsel rendered ineffective assistance because counsel failed to object to the assessment errors and raise the issue in his postsentencing motion.

¶ 5 It is well settled that a defendant who fails to raise a sentencing issue in the trial court through both a contemporaneous objection and a written postsentencing motion forfeits the issue. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). However, the rules of forfeiture and waiver also apply to the State, and where the State fails to argue that defendant has forfeited the issue, it waives the forfeiture. *People v. Reed*, 2016 IL App (1st) 140498, ¶ 13. Here, the State did not respond to defendant's plain error or ineffective assistance of counsel arguments. Nor has the State argued that defendant forfeited his challenges to the assessments. Accordingly, we address defendant's claims on the merits. Furthermore, defendant's statutory right to the *per diem* presentencing monetary credit is mandatory, not subject to the normal rules of waiver, and may be raised for the first time on appeal. *People v. Woodard*, 175 Ill. 2d 435, 457-58 (1997). The propriety of the imposition of fines and fees is a question of law which we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 6 Pursuant to section 110-14 of the Code of Criminal Procedure (725 ILCS 5/110-14 (West 2012)), a defendant is entitled to have a credit of \$5 for each day he spent in presentence custody applied against his fines. The defendant spent 800 days in presentence custody, and is therefore entitled to a maximum credit of \$4,000. In the fines and fees order, the trial court gave defendant credit for serving seven of the 800 days he spent in custody, resulting in a credit of \$35. The trial court applied only seven days' of credit because that resulted in a full offset of the defendant's \$35 in fines. Defendant claims that five additional assessments labeled as fees are actually fines, and that he is entitled to apply an additional credit of \$59 to offset these assessments.

¶ 7 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 rather than 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.* (quoting *Jones*, 223 Ill. 2d at 581). 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).

¶ 8 Defendant first contends that he is entitled to credit against the \$15 Automation fee assessed pursuant to section 27.3a(1) of the Clerks of Court Act (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 a defendant, but instead, finance a component of the court system for general costs of litigation.

¶ 9 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 a collateral consequence of a defendant's conviction. Defendant asserts, however, that *Tolliver* predates *Graves* and is no longer persuasive because its analysis is contrary to *Graves*, which held that a fee must reimburse the State for some cost incurred in prosecuting the defendant.

¶ 10 We disagree. *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.

¶ 11 Section 27.3a(1) of the Act states that the 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).

¶ 12 It is axiomatic that 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 systems which are not only necessary, but crucial 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 his presentence custody credit. See also *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (holding that the automation and document storage fees are fees rather than fines).

¶ 13 Defendant next contends that he is entitled to credit against the \$25 Court Services (Sheriff) fee assessed pursuant to section 5-1103 of the Counties Code (Code) (55 ILCS 5/5-1103 (West 2012)). He points out that the assessment applies to all defendants who are found guilty of an offense, and argues that it therefore constitutes a penalty. He further notes that the purpose of the assessment is to defray court security expenses incurred by the sheriff. Consequently, he argues that the assessment does not compensate the State for the costs of prosecuting a particular defendant, and thus, it is a fine rather than a fee.

¶ 14 Section 5-1103 of the Code states that the Court Services fee is "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." 55 ILCS 5/5-1103 (West 2012). This court has previously found that the Court Services fee is a fee rather than a fine. In *Tolliver*, we held that the charge was a fee because it was compensatory and a collateral consequence of the defendant's conviction. *Tolliver*, 363 Ill. App. 3d at 97. Similarly, in *People*

*v. Adair*, 406 Ill. App. 3d 133, 144 (2010), we found that the plain language of the statute indicated that the charge was a fee assessed to defray the expenses incurred by the sheriff for providing court security during the defendant's court proceedings. Accordingly, we concluded that the charge could not be offset by the presentence custody credit. *Id.* at 145; see also *Heller*, 2017 IL App (4th) 140658, ¶ 74 (citing *Tolliver* and finding the court services fee is a fee rather than a fine).

¶ 15 During the prosecution of every defendant, the sheriff provides security in the courtroom. In this case, defendant was in the custody of the sheriff throughout the proceedings. Consequently, the sheriff transported defendant to and from the courthouse for all of his proceedings, held him in the holding cell while he waited for his case to be called, escorted him in and out of the courtroom, and remained in the courtroom to provide security. The Court Services fee compensates the sheriff for the costs incurred in providing the security and services that are absolutely vital to the process of prosecuting a defendant. Accordingly, we adhere to our reasoning in *Tolliver* and *Adair*, and continue to hold that the Court Services fee is a fee rather than a fine. Therefore, defendant is not entitled to offset this fee with his presentence custody credit.

¶ 16 Finally, defendant contends that he is entitled to credit against the \$2 State's Attorney Records Automation fee assessed pursuant to section 4-2002.1(c) of the Code (55 ILCS 5/4-2002.1(c) (West 2012)) and the \$2 Public Defender Records Automation fee assessed pursuant to section 3-4012 of the Code (55 ILCS 5/3-4012 (West 2012)). Defendant points out that these assessments apply to all defendants who are found guilty of an offense, and that the purpose of the assessments is to discharge the expenses associated with establishing and maintaining

automated record keeping systems. He argues that the assessments therefore do not compensate the State for prosecuting a particular defendant, and thus, they constitute fines rather than fees.

¶ 17 This court has repeatedly found that the \$2 State's Attorney Records Automation fee and the \$2 Public Defender Records Automation fee are compensatory in nature because they reimburse the State for its expenses related to maintaining its automated record-keeping systems. *Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46 (Public Defender assessment is a fee, not a fine); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30 (State's Attorney assessment is a fee, not a fine). 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. We further explained that because the defendant was represented by a public defender, counsel would have used the public defender's office record systems in representing the defendant. *Id.* at ¶ 17. Consequently, we concluded that the assessments were fees, not fines, and thus, not subject to offset by the *per diem* credit. *Id.* at ¶¶ 16-17; *Green*, 2016 IL App (1st) 134011, ¶ 46; *Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65; *Rogers*, 2014 IL App (4th) 121088, ¶ 30; but see *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56 (finding the assessments are fines because they do not compensate the State for the costs associated with prosecuting a particular defendant).

¶ 18 We agree with the holdings in *Reed*, *Green*, *Bowen*, and *Rogers*, and similarly conclude that the State's Attorney Records Automation fee and the Public Defender Records Automation fee are fees, not fines. Accordingly, defendant is not entitled to offset these fees with his

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presentence custody credit. As all of the challenged assessments are fees, not fines, defendant is not entitled to any additional credit. We affirm defendant's conviction and sentence.

¶ 19 Affirmed.