

No. 1-15-0352

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).

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. 14 CR 6558
)	
MONROE SHIVERS,)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* We vacated two erroneously assessed fines and fees imposed against defendant as part of his conviction. A portion of defendant's presentence custody credit is applied to two fines, thus reducing the total amount of fines and fees owed.
- ¶ 2 Following a bench trial, defendant Monroe Shivers was convicted of burglary (720 ILCS 5/19-1(a) (West 2012)). Defendant was subject to mandatory Class X sentencing due to two prior qualifying convictions and was sentenced to eight years' imprisonment. Defendant also was assessed various fines and fees, which are the sole subject of this appeal. On appeal, defendant contends that two of the fees were erroneously imposed and that a portion of the credit for the

days that he spent in custody should be applied to several other assessments which, he argues, are fines. For the reasons that follow, we vacate two of the monetary penalties assessed and direct the clerk of the circuit court to correct defendant's fines and fees order.

¶ 3 The State presented evidence at trial that, on April 2, 2014, Ray Moran, a police officer employed by the Norfolk Southern Railway Corporation, observed defendant and another man board a slow-moving train and open the doors of a train car with bolt cutters. The men then tossed boxes containing printer cartridges from the train car. After a brief chase, defendant was apprehended by the officer.

¶ 4 The sentencing order indicates that defendant was convicted of a Class 2 felony, but was sentenced as a Class X offender to eight years' imprisonment. The sentencing order also states that defendant should receive 281 days' credit for time spent in presentence custody. Defendant was assessed a total of \$454 in fines, fees, and other assessments.

¶ 5 On appeal, this court reviews *de novo* the propriety of the trial court's imposition of fines and fees because it raises issues of statutory interpretation. *People v. Green*, 2016 IL App (1st) 134011, ¶ 44. Although defendant did not raise a challenge to the fines and fees order in the circuit court, he argues that this court can address the issue under the plain-error doctrine. A sentencing error may affect a defendant's substantial rights and, therefore, can be reviewed under the plain-error rule. *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 20. Thus, we may review these assessments and, if necessary, modify the circuit court's order without remanding the case, pursuant to Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999). See *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 6 As to his first argument, defendant contends and the State agrees that the \$5 electronic citation fee was erroneously imposed. Section 27.3e of the Clerk of Courts Act specifies that this

fee applies only to a defendant who is involved in “any traffic, misdemeanor, municipal ordinance or conservation case.” 705 ILCS 105/27.3e (West 2012). Here, defendant was convicted of burglary, a Class 2 felony (720 ILCS 5/19-1(b) (West 2013)) and, thus, the electronic citation fee was incorrectly assessed. *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46. The State further concedes that the \$5 court system fee (55 ILCS 5/5-1101(a) (West 2013)), should not have been assessed against defendant because that fee applies only to those convicted or sentenced to supervision for a violation of the Illinois Vehicle Code. Accordingly, the electronic citation fee and the court system fee are vacated.

¶ 7 Defendant’s remaining contentions involve the application of presentence custody credit toward several other monetary assessments imposed against him. For each day of incarceration prior to sentencing, a defendant is entitled to a credit of \$5 toward the monetary assessments levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2012). Here, defendant served 281 days in presentence custody and had accumulated \$1,405 of credit toward his eligible fines and fees. As we have previously stated, defendant was assessed \$454 in fines, fees, and other assessments, and we have vacated \$10 of those fees.

¶ 8 We now consider if any remaining fines and fees may be offset by defendant’s presentence custody credit. Before addressing the various assessments challenged by defendant, we note that, under the plain language of section 110-14(a), that credit can be applied only to fines and not to fees. See 725 ILCS 5/110-14(a) (West 2012); *People v. Johnson*, 2011 IL 111817, ¶ 8.

¶ 9 Accordingly, we will distinguish the difference between a “fine” and a “fee.” “A ‘fine,’ *** is ‘punitively in nature’ and is ‘a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense.’ ” *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.” *Id.* (citing *Jones*, 223 Ill. 2d at 582). The labeling of 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.” *Id.* at 250-51 (citing *Jones*, 223 Ill. 2d at 600).

¶ 10 As in *Graves*, the six assessments which defendant challenges may be offset by his presentence custody credit. Defendant asserts, and the State correctly concedes, that the \$10 mental health court fee (55 ILCS 5/5-1101(d-5) (West 2013)), the \$5 youth diversion program fee (55 ILCS 5/5-1101(e) (West 2013)), the \$5 drug court fee (55 ILCS 5/5-1101(f) (West 2013)), and the \$30 Children’s Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2013)), are fines which are offset by a defendant’s presentence custody credit, as indicated in the fines and fees order itself.

¶ 11 In addition, the State agrees that the \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2013)), is a fine. See *Graves*, 235 Ill. 2d at 253 (fines and fees assessed under section 5-1101 of the Counties Code are “monetary penalties to be paid by a defendant” upon a judgment of guilty). The court system fee has been deemed a fine because, like the monetary penalties imposed under section 5-1101 of the Counties Code, it is imposed when a defendant is found guilty of a felony, regardless of what transpired in the particular case, and it does not compensate the State for prosecuting that particular defendant. *People v. Smith*, 2013 IL App (2d) 120691,

¶ 21.

¶ 12 The State further concedes that the \$15 State Police operations assessment (705 ILCS 105/27.3a (1.5) (West 2012)), is also a fine. See *People v. Warren*, 2016 IL App (4th) 120721-B,

¶ 147. Accordingly, defendant's presentence custody credit can be applied to offset those six fines, which total \$115.

¶ 13 However, the remaining assessments challenged by defendant cannot be similarly offset. Defendant contends that his presentence custody credit should be applied to the circuit court clerk's \$15 automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2016)), and the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2016)), arguing that those assessments penalties are fines and not fees because they do not seek to reimburse the State for costs incurred in his prosecution.

¶ 14 Similarly, defendant asserts that the assessment of \$190 for the filing of a felony complaint is a fine and not a fee. Defendant points out that this assessment is atop a statutory sliding scale of similar assessments based on the severity of the offense. Defendant argues that this assessment is meant to reimburse the clerk of the circuit court for its expenses, and is unrelated to the costs incurred in his prosecution. See 705 ILCS 105/27.2a(w)(1)(A)-(K) (West 2016). In addition, defendant contends that the \$25 court services fee (55 ILCS 5/5-1103 (West 2016)), is a fine because it funds a portion of the court system and applies to all criminal defendants who are found guilty, as opposed to compensating the State for a cost incurred in his prosecution.

¶ 15 In *People v. Tolliver*, 363 Ill. App. 3d 94 (2006), this court held that those four assessments are fees because they are compensatory and represent a "collateral consequence" of a conviction. *Id.* at 97. The automation and document storage fees assist in the funding for the maintenance of those systems (*People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 29-30), and the

statute authorizing the court services fee (55 ILCS 5/5-1103 (West 2016)), expressly states that it is intended to defray the cost of court expenses and the provision of court security. See *People v. Pohl*, 2012 IL App (2d) 100629, ¶¶ 11-12. The felony complaint filing fee is a fee and not a fine, because it is compensatory, not punitive in nature. *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42.

¶ 16 Defendant acknowledges *Tolliver* and similar precedents but points out that, since *Tolliver* was decided, our supreme court in *Graves* clarified that, to be correctly designated as a fee, an assessment must reimburse the State for a cost incurred in his prosecution. See *Graves*, 235 Ill. 2d at 250. However, as stated above, those assessments represent a portion of the overall costs incurred to prosecute defendant. Since *Graves*, several cases have established that these four monetary penalties are fees. See *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (clerk's automation and document storage assessment and sheriff's court services charge are fees); *People v. Larue*, 2014 IL App (4th) 120595, ¶¶ 62-68 (those assessments, as well as the felony complaint filing assessment, are fees); *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 25-31 (same). The fact that such assessments are not tailored to each defendant's case, does not negate the fact that they do compensate the State in part for the costs incurred in their prosecution. See *Graves*, 235 Ill. 2d at 250 (a fee recovers the State's costs, *in whole or in any part*, for prosecuting the defendant (emphasis added)).

¶ 17 Defendant next argues that a portion of his credit should be applied toward the \$2 State's Attorney and \$2 Public Defender records automation fees. As we discussed above, defendant argues that these assessments do not reimburse the State for costs incurred in prosecuting a particular defendant.

¶ 18 The statute that enacted the State’s Attorney records automation fee states, in pertinent part, that \$2 is assessed “to discharge the expenses of the State's Attorney's office for establishing and maintaining automated record keeping systems.” 55 ILCS 5/4-2002.1(c) (West 2012). The statute authorizing the \$2 Public Defender records automation fee uses similar language regarding the office of the Cook County Public Defender. See 55 ILCS 5/3-4012 (West 2012). We agree with prior decisions which held that these assessments are fees, not fines and, thus, are not subject to being offset by defendant’s presentence custody credit. See *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 assessments are intended to reimburse those offices for expenses); see also *Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Maxey*, 2016 IL App (1st) 130698, ¶ 144; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (the assessments are fines because they do not compensate the State for any costs associated in prosecuting a particular defendant). We agree with the analysis in *Bowen* and similar cases that, when a charge does not include a punitive aspect, it is a fee, not a fine. Therefore, the State’s Attorney and Public Defender records automation assessments cannot be offset by defendant’s credit.

¶ 19 In conclusion, the \$5 electronic citation fee and the \$5 court system fee imposed against defendant are vacated. Accordingly, defendant owes a total of \$444 in assessments, as opposed to the \$454 imposed by the trial court. Furthermore, defendant is entitled to have six fines offset by a portion of his presentence custody credit, totaling \$115. Applying that offset, the \$444 amount owed by defendant is reduced to \$329.

No. 1-15-0352

¶ 20 Pursuant to Ill. S. Ct. R. 615(b)(1), we direct the clerk of the circuit court to correct the fines and fees order to reflect a total amount due of \$329.

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

¶ 22