

2017 IL App (1st) 150827-U

No. 1-15-0827

Order filed April 24, 2017

First 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).

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 21517
)	
LORENZO BOYD,)	Honorable
)	Carol M. Howard,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* We modify the mittimus to reflect the correct offense of which defendant was convicted of and correct the fines and fees order. Judgment affirmed in all other respects.

¶ 2 Following a bench trial, defendant Lorenzo Boyd was convicted of possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2012)), and sentenced as a Class X offender to seven years' imprisonment. On appeal, defendant contends that his

mittimus should be amended to reflect the correct offense of which he was convicted and challenges certain assessments imposed by the trial court. We affirm as modified.

¶ 3 Defendant was charged with one count of possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2012)). Defendant waived his right to a jury trial and proceeded to a bench trial. The evidence at trial showed that, on October 16, 2013, Officer Daniel Frausto observed defendant engage in two suspect narcotics transactions. During each transaction, defendant would remove objects from a brown paper bag located near the base of a tree. After defendant was arrested, officers recovered 12 mini ziplock bags containing suspect heroin from the brown paper bag. The ziplock bags tested positive for 3.3 grams of heroin. The trial court found defendant guilty of possession of heroin with intent to deliver and sentenced him by background as a Class X offender to 7 years' imprisonment. It also imposed \$499 in various fines, fees, and costs, and gave defendant credit for 498 days of presentence incarceration. The trial court denied defendant's motion to reconsider sentence.

¶ 4 On appeal, defendant contends that his mittimus should be amended to reflect the correct offense of which he was convicted. He also contends that the trial court erroneously assessed one fee, and that a number of other assessments should be offset by presentence credit.

¶ 5 Initially, defendant concedes that he did not raise these issues in the trial court. However, as the State does not argue forfeiture on appeal, the State has forfeited the claim that the issues raised by defendant are forfeited. *See People v. Whitfield*, 228 Ill. 2d 502, 509 (2007) (the State may forfeit the claim that an issue defendant raises is forfeited if the State does not argue forfeiture on appeal). Moreover, a corrected mittimus may be issued at any time and a reviewing court may correct a mittimus without remanding to the trial court. *People v. Carlisle*, 2015 IL

App (1st) 131144, ¶ 84. Similarly, a defendant may request presentence credit for the first time on appeal. *People v. Lake*, 2015 IL App (3d) 140031, ¶ 31. We may modify a fines and fees order without remanding the case to the trial court pursuant to Illinois Supreme Court Rule 615(b)(1). *People v. Bryant*, 2016 IL App (1st) 140421, ¶22.

¶ 6 Defendant first argues, and the State agrees, that his mittimus should be amended to reflect a conviction for the offense of which the trial court found him guilty: Class 1 possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2012)). The mittimus currently indicates that defendant was found guilty of Class 1 manufacture or delivery of a controlled substance (720 ILCS 570/401(c)(1) (West 2012)). Whether a mittimus should be corrected is a question of law we review *de novo*. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 86. This court has the authority, under Illinois Supreme Court Rule 615(b), to order the clerk to correct the mittimus without remand. Accordingly, we order the clerk of the circuit court to correct defendant's mittimus to indicate that he was convicted of possession of a controlled substance with intent to deliver, not delivery or manufacture of a controlled substance. See *People v. Hill*, 408 Ill. App. 3d 23, 32 (2011) (ordering that a defendant's mittimus be corrected to reflect that defendant was convicted of possession of a controlled substance with intent to deliver instead of manufacture or delivery of a controlled substance).

¶ 7 Defendant next contends, and the State agrees, that the trial court erroneously assessed the \$5 electronic citation fee (720 ILCS 105/27.3e (West 2012)) against him. We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Glass*, 2017 IL App (1st) 143551, ¶21. The statute authorizing this fee dictates that it shall be paid by a defendant "in any traffic, misdemeanor, municipal ordinance, or conservation case upon a judgment of guilty

or grant of supervision.” 720 ILCS 105/27.3e (West 2012). As defendant was convicted of a felony offense, the trial court erroneously assessed this fee against him. Accordingly, we vacate the \$5 electronic citation fee. *See People v. Brown*, 2017 IL App (1st) 142877, ¶ 68 (vacating an electronic citation fee where defendant was convicted of a felony.)

¶ 8 Defendant next argues that certain “fees” assessed against him operate as “fines” and should therefore be offset by his presentence incarceration credit. 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 incarceration. 725 ILCS 5/110-14(a) (West 2012). “The credit for presentence incarceration can only reduce fines, not fees.” *People v. Jones*, 233 Ill. 2d 569, 599 (2006). A “fine” is punitive in nature and is imposed as part of a sentence on a person convicted of a criminal offense. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). A “fee” is a charge that seeks to recoup expenses incurred by the State in prosecuting the defendant. *Id.* The legislature's label for a charge is strong evidence of whether the charge is a fee or a fine, but 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.*

¶ 9 Defendant first argues that the felony complaint filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012) operates as a fine and should be offset by his presentence credit. Defendant argues that the fact that the statute has an ascending fee structure, which ranges from \$30 for minor traffic or ordinance violations to \$190 for felony complaints, indicates that the assessment is meant to recoup expenses for the clerk and not to reimburse the State for costs incurred at the result of prosecuting defendant. He also argues that the higher fees for more severe offenses indicate that the fee is punitive rather than compensatory. However, this court recently held that

the felony complaint assessment is a fee as it is compensatory, and not punitive, in nature. *People v. Bingham*, 2017 IL App (1st) 143150. Accordingly, the \$190 felony complaint assessment shall not be offset by defendant's presentence credit.

¶ 10 Defendant next contends that the clerk's \$15 automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2012)) and \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2012)) assessed against him are actually fines, and should be offset by his presentence credit. Defendant acknowledges that in *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that these assessments are fees, but argues that the analysis in *Tolliver* is contrary to the reasoning set out by our supreme court in *People v. Graves*, 235 Ill. 2d 244 (2009). We disagree. In *Graves*, the court held that the "central characteristic which separates a fee from a fine" 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 *People v. Jones*, 223 Ill. 2d 569, 600 (2006)). In *Tolliver*, this court held 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, this court's analysis in *Tolliver* is in line with our supreme court's reasoning that fees compensate for part of the overall costs incurred in the prosecution of a defendant. Accordingly, the \$15 document storage fee and \$15 automation fee shall not be offset by defendant's presentence credit. See *People v. Brown*, 2017 IL App (1st) 142877, ¶ 78 (noting that *Tolliver* and *Graves* employed the same reasoning and holding that these fees are not offset by presentence credit).

¶ 11 Defendant next contends, and the State agrees, that the \$15 state police operations fee (705 ILCS 105/27.3a(1-5) (West 2012)) operates as a fine and should be offset by his presentence

credit. The court in *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31, explained that this fee is actually a fine because the money generated from the assessment may be used to finance any lawful purpose or function of the Illinois Department of State Police rather than used to reimburse the State for costs incurred with a defendant's prosecution. *See also People v. Bingham*, 2017 IL App (1st) 143150, ¶ 40 (awarding presentence credit for the state police operations fee). As defendant was incarcerated for 498 days, and is therefore entitled to \$2,490 of credit, his \$15 state police operations fee is completely offset.

¶ 12 Defendant next contends that he is entitled to presentence credit against both the \$2 public defender records automation fee (55 ILCS 5/3-4012 (West 2012)) and the \$2 state's attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2012)) assessed against him. However, this court has found that both the state's attorney records automation fee and the public defender records automation fee constitute fees, and not fines, as they are compensatory instead of punitive in nature. *People v. Reed*, 2016 IL App (1st) 140498 ¶¶16-17 (holding that the assessments were fees because both the State's Attorney and Public Defender would have used their respective office records systems in the course of prosecuting and defending the defendant.) *See also People v. Bowen*, 2015 IL App (1st) 132046, ¶ 65 (finding the language of the statutes authorizing each fee to be nearly identical and finding no reason to distinguish between them.) *Contra People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56. Accordingly, neither of the records automation fees are offset by defendant's presentence credit.

¶ 13 Defendant next challenges the \$25 Court Services fee (55 ILCS 5/5-1103 (West 2012)) assessed against him. This fee is charged to "defray[] court security expenses incurred by the sheriff in providing court services." 55 ILCS 5/5-1103 (West 2012). This court has previously

determined that this assessment is fee because it is “compensatory and a collateral consequence of defendant's conviction.” *Tolliver*, 363 Ill. App. 3d at 97. *See also People v. Kornegay*, 2014 IL App (1st) 122573, ¶ 53 (holding that the assessment is a fee that is not offset by presentence credit.) Accordingly, the \$25 court services fee shall not be offset by defendant’s presentence credit.

¶ 14 Finally, defendant argues, and the State agrees, that the \$50 court system fee (55 ILCS 5/5-1101(c) (West 2012)) should be offset by his presentence credit. This court has held that this assessment is a fine because it “is essentially punitive, particularly because its amount varies depending on the degree of a defendant's offense.” *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15. Accordingly, defendant’s \$50 court system assessment is offset by his presentence credit.

¶ 15 For the foregoing reasons, we modify the mittimus to reflect defendant’s conviction for possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2012)) rather than manufacture or delivery of a controlled substance (720 ILCS 570/401(c)(1) (West 2012)). Further, we vacate defendant’s \$5 electronic citation fee. We find that \$15 state police operations fee and the \$50 court system fees are completely offset by defendant’s presentence credit. However, the \$190 felony complaint filing fee, the \$15 clerk’s automation fee, the \$15 clerk’s document storage fee, the \$2 public defender records automation fee, the \$2 state's attorney records automation fee, and the \$25 court services fee are not offset by presentence credit. Pursuant to Illinois Supreme Court Rule 615(b)(1), we order the clerk of circuit court to correct the mittimus and fines and fees order accordingly. We affirm the judgment in all other respects.

¶ 16 Affirmed as modified.