

No. 1-15-1914

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 11936
)	
DARIEN SIMON,)	Honorable
)	William Timothy O'Brien,
Defendant-Appellant)	Judge Presiding.

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

ORDER

¶ 1 *Held:* We affirmed defendant's conviction for burglary, but modified his fines, fees, and costs order.

¶ 2 Following a bench trial, defendant Darien Simon was convicted of burglary in violation of 720 ILCS 5/19-1(a) (West 2014), and sentenced to 5 years' imprisonment with alcohol treatment, two years of mandatory supervised release, 135 days of presentence custody credit, and assessed \$459 in fines, fees, and costs. Defendant's motion to reconsider sentence was denied. On appeal, defendant does not challenge his conviction or sentence, but argues that his fines, fees, and costs order should be modified to reflect credit for presentence custody against the monetary assessments imposed by the trial court. We affirm defendant's conviction and sentence, but modify his fines, fees, and costs order.

¶ 3 On appeal, defendant argues that he is entitled to presentence custody credit toward the following: a \$30 Children's Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2014)); a \$15 State Police Operations fee (705 ILCS 105/27.3a(1.5) (West 2014)); a \$50 Court System fee (55 ILCS 5/5-1101(c) (West 2014)); (4) a \$2 Public Defender Records Automation fee (55 ILCS 5/3-4012 (West 2012)); (5) a \$2 State's Attorney Records Automation fee 55 ILCS 5/4-2002 (West 2013)); (6) a \$15 Automation fee (705 ILCS 105/27.3a (West 2016)); and (7) a \$15 Document Storage System fee (705 ILCS 105/27.3c (West 2014)). The State agrees that defendant is owed presentence custody credit against: (1) \$30 Children's Advocacy Center assessment; (2) \$15 State Police Operations fee; and (3) the \$50 Court System fee, but argues that the remaining assessments are not fines and, thus, are not subject to offset by presentence custody credit.

¶ 4 Defendant concedes that, because he did not challenge these assessments at trial, his claims are arguably forfeited (*People v. Hillier*, 237 Ill. 2d 539, 544 (2010)), but that this court should review his claims under the plain-error doctrine. However, because the State has not argued against defendant's forfeiture of his fees claims or our plain-error review, those arguments have been forfeited. *See People v. Williams*, 193 Ill. 2d 306, 348 (2000) (the rules of forfeiture also apply to the State). Accordingly, we review the merits of defendant's claims.

¶ 5 We review the propriety of a trial court's imposition of fines and fees *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22. A defendant is entitled to a \$5 per day credit toward the assessments levied against him for each day he is incarcerated prior to sentencing. 725 ILCS 5/110-14(a) (West 2014). The credit applies only to assessments imposed pursuant to a conviction and not to any other court costs or fees. *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). "A 'fine' is a part of the punishment for a conviction, whereas a 'fee' *** seeks to recoup expenses incurred by the state [to compensate] the state for some expenditure incurred in

prosecuting the defendant.” *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Here, defendant accumulated 135 days of presentence custody credit and, therefore, is entitled to up to \$675 of credit toward his eligible assessments.

¶ 6 Defendant argues, and the State agrees, that the \$30 Children’s Advocacy Center fee; the \$15 State Police Operations fee; and \$50 Court System fee are fines subject to offset by presentence credit. We agree with the parties. See *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 107 (“Children’s Advocacy Center fee should be characterized as a ‘fine’ ”); *People v. Brown*, 2017 IL App (1st) 150146, ¶ 36 (“State Police Operations charge *** is a fine”); *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15 (Court System fee is a fine). We, therefore, hold that defendant is entitled to presentence incarceration credit toward the Children’s Advocacy Center fee, the State Police Operations fee, and the Court System fee.

¶ 7 The parties disagree with respect to the four remaining assessments that defendant challenges on appeal. Defendant argues, and the State disagrees, that the \$2 State’s Attorney Records Automation fee, and the \$2 Public Defender Records Automation fee, are fines against which presentence credit may be applied. We agree with the State that these are fees, not fines. “[T]he bulk of legal authority has concluded that both assessments are fees rather than fines because they are designed to compensate those organizations for the expenses they incur in updating their automated record-keeping systems while prosecuting and defending criminal defendants.” *Brown*, 2017 IL App (1st) 150146, ¶ 38. Accordingly, we conclude that the State’s Attorney Records Automation and the Public Defender Records Automation assessments are fees not subject to offset by defendant’s presentence custody credit.

¶ 8 Defendant also argues, and the State disagrees, that the \$15 Automation charge, and \$15 Document Storage charge, imposed by the trial court are fines and, therefore, subject to offset.

This court has previously rejected defendant's characterization of these charges and has determined that they are fees rather than fines because they are compensatory and the collateral end result of defendant's conviction. *Brown*, 2017 IL App (1st) 150146, ¶ 39 (citing *Tolliver*, 363 Ill. App. 3d at 97). Accordingly, the Automation charge and Document Storage charge constitute fees that are not subject to offset by presentence incarceration credit.

¶ 9 For the foregoing reasons, we hold that the \$30 Children's Advocacy Center fee (55 ILCS 5/5-1101(f-5) (West 2014)); the \$15 State Police Operations fee (705 ILCS 105/27.3a(1.5) (West 2014)); and the \$50 Court System fee (55 ILCS 5/5-1101(c) (West 2014)), are subject to offset by defendant's presentence custody credit. The remaining disputed assessments are not subject to offset.

¶ 10 Pursuant to our authority under Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999), we direct the clerk of the circuit court to modify the fines and fees order. See *Bryant*, 2016 IL App (1st) 140421, ¶ 22 (we may modify a fines and fees order without remanding the case to the trial court pursuant to Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999). The trial court is affirmed in all other respects.

¶ 11 Affirmed; fines and fees order modified.