

No. 1-15-2426

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. 14 CR 3762
)
 CHARLES HALL,) Honorable
) Arthur F. Hill, Jr.,
 Defendant-Appellant.) Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justice Pucinski concurred in the judgment.
Justice Hyman concurred in part and dissented in part.

ORDER

¶ 1 *Held:* Fines and fees order corrected to reflect defendant’s presentence custody credit, the vacation of a certain assessment and the offset of certain fines by defendant’s presentence custody credit.

¶ 2 Following a bench trial, defendant, Charles Hall, was found guilty of aggravated robbery. He was sentenced, because of his criminal background, to a Class X sentence of nine years in prison. Hall was given credit for 524 days of presentence custody credit, and assessed a total of

\$454 in fines, fees and costs. On appeal, Hall contests only the imposition of certain fines and fees. We affirm and correct the fines and fees order.

¶ 3 Hall acknowledges that he failed to preserve these issues for appeal because he did not challenge the fines and fees order in the trial court. However, Hall asserts that this court may correct the fines and fees order pursuant to this court's authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999). In the alternative, Hall requests that this court review his claims pursuant to the plain error doctrine.

¶ 4 It is well settled that a defendant forfeits sentencing issues not raised in the trial court through both a contemporaneous objection and a written postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). We disagree that this court can reach the merits of Hall's claims under Rule 615(b), which includes among the powers of a reviewing court the ability to modify the judgment order appealed from. Subsection (b) cannot be read in isolation from subsection (a), which directs that errors not affecting substantial rights "shall be disregarded." Ill. Sup. Ct. Rule 615(a) (eff. Aug. 27, 1999); see *People v. Grigorov*, 2017 IL App (1st) 143274, ¶¶ 13-14. Moreover, the plain error doctrine is not "an appropriate vehicle for review in cases where the complained-of error does not stem from failure to provide a fair process for determining the imposition of the fine or fee at issue but [is] a mere clerical mistake." See *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017).

¶ 5 But the State, as well as a defendant, may forfeit arguments on appeal and where the State fails to argue that defendant has forfeited an issue, it waives the argument. *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). Here, because the State does not seek to enforce Hall's forfeiture of these issues, we may reach the

merits. The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 6 Hall's fines and fees order reflects that he spent 524 days in presentence custody. But the order does not reflect that Hall is therefore entitled to \$2,620 of presentence custody credit to offset any fines that he is assessed. See 725 ILCS 5/110-14(a) (West 2014). We encourage trial courts and trial counsel to ensure that this mathematical calculation is reflected in judgment orders.

¶ 7 The State agrees that two of the fees—the \$50 Court System Fee and the \$15 State Police Operations Fee—should appropriately be categorized as fines offset by the *per diem* credit. See *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21 (Court System Fee deemed a fine as it is "not intended or geared to compensate the State (or the county) for the cost of prosecuting a defendant."); *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (State Police Operations Fee deemed a fine for the same reason). The State also concedes that the \$5 Electronic Citation fee, assessed only in traffic, misdemeanor, municipal ordinance, and conservation cases, must be vacated in Hall's felony case. We agree.

¶ 8 This court has consistently rejected similar challenges to certain of the other assessments raised by Hall, *i.e.*, the \$190 Felony Complaint Fee, The \$15 Clerk Automation Fee, the \$15 Document Storage Fee and the \$25 Court Services (Sheriff) Assessment. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006) (charges for felony complaint, clerk automation, document storage and court services are all fees); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (clerk automation and document storage assessments properly categorized as fees); *People v. Heller*,

2017 IL App (4th) 140658, ¶ 74 (court services assessment is a fee). Hall is therefore not entitled to credit against these fees.

¶ 9 That leaves us with the \$2 State's Attorney and \$2 Public Defender records automation charges authorized, respectively, by 55 ILCS 5/4-2002.1(c) (West 2014) and 55 ILCS 5/3-4012 (West 2014). Numerous decisions in this district have concluded that these assessments are fees, not fines. See *People v. Brown*, 2017 IL App (1st) 142877, ¶¶ 75-78 (concluding that both the \$2 State's Attorney records automation charge and the \$2 Public Defender records automation charge are fees rather than fines); *People v. Murphy*, 2017 IL App (1st) 142092, ¶¶ 19-20 (same); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (same); but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (reaching opposite result). We elect to follow the weight of authority and conclude these assessments are fees not reduced by the *per diem* credit.

¶ 10 Accordingly, pursuant to our ability to correct a sentencing order without remand (see *Bowen*, 2015 IL App (1st) 132046, ¶ 68), we order the clerk of the circuit court to correct Hall's fines and fees order by vacating the \$5 electronic citation fee and showing that the \$15 State Police operations fine and \$50 court systems fine are offset by his presentence custody credit for a new total due of \$354. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 11 Affirmed; fines and fees order corrected.

¶ 12 JUSTICE HYMAN, concurring in part and dissenting in part:

¶ 13 I agree with the majority's decision, with the exception of the treatment of the State's Attorney's and Public Defender's records fees. As I previously wrote in *People v. Camacho*,

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2016 IL App (1st) 140604, ¶¶ 47-56, those “fees” should rather be categorized as “fines” (and therefore Hall should be able to apply the *per diem* credit against them).