

No. 1-15-2618

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 JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 14 CR 2078(02)
	)	
ELTON VAUGHN,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
JUSTICE HALL and JUSTICE LAMPKIN concurred in the judgment.

ORDER

- ¶ 1 *Held:* We direct the clerk of the circuit court to modify defendant's fines, fees, and costs order; we affirm in all other respects.
- ¶ 2 Following a jury trial, defendant-appellant, Elton Vaughn, was convicted of possession of a controlled substance in violation of 720 ILCS 570/402(c) (West 2012), and sentenced to four years' imprisonment. On appeal, defendant challenges only the fines, fees, and costs order. For the reasons that follow, we direct the clerk of the circuit court to modify defendant's fines, fees, and costs order.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver. The evidence at trial established that, on December 26, 2013, Chicago police officer McCarthy was working as part of a tactical team with three of his partners in the vicinity of Springfield Avenue and Roosevelt Road. Officer McCarthy was driving westbound on Roosevelt Road when he observed a man, identified as defendant, pacing in front of a building located at 3910 W. Roosevelt Road, and shouting: “blows.” Officer McCarthy was approximately 50 feet away from defendant, the windows of his police vehicle were open, and it was broad daylight. Officer McCarthy explained that, based on his experience in that neighborhood, drug dealers typically shout out the name of their products, in this case, heroin. Officer McCarthy pulled over, exited the vehicle, and placed defendant into custody. A custodial search of defendant recovered 12 Ziplock bags containing suspect heroin and \$147 in cash.

¶ 4 The parties stipulated that Officer Acevedo would testify that the suspect heroin recovered from defendant was inventoried under Chicago Police Department procedures. An Illinois State Police forensic scientist would testify that the recovered substance weighed 3.1 grams and contained heroin.

¶ 5 Defendant was found guilty of the lesser included offense of possession of a controlled substance. Defendant was sentenced to four years’ imprisonment and assessed \$1,337 in fines, fees, and costs. Defendant appeals only as to the fines, fees, and costs order.

¶ 6 On appeal, defendant contends that the assessed fines, fees, and costs should be reduced to \$570. He argues that: (1) an improperly imposed fee should be vacated; and (2) he is entitled to presentence custody credit against certain fines and assessments labeled as “fees” which are actually “fines.”

¶ 7 As an initial matter, defendant concedes he did not raise these challenges at trial and they are, therefore, arguably forfeited. Citing *People v. Hillier*, 237 Ill. 2d 539 (2010), defendant requests that we review his claims under the plain-error doctrine. See *id.* at 545; Ill. S. Ct. R. 615(a). Citing *People v. Woodward*, 175 Ill. 2d 435 (1997), defendant also asserts that the sentencing credit issue may be raised for the first time on appeal (*id.* at 444-48), and that we have the authority to modify the fines and fees order without remand pursuant to Rule 615(b). The State, does not argue that the issues are forfeited, noting only that this court has the authority to direct the clerk of the circuit court to correct the mittimus at any time.

¶ 8 We disagree that defendant's challenge is reviewable under the plain-error doctrine, or that we may modify the fines, fees, and costs order under Rule 615(b). Defendant does not claim that the trial court failed to provide a fair process for determining his fines and fees. Therefore, his complained-of errors do not substantially affect his rights and are not reviewable under the plain-error doctrine. *People v. Grigorov*, 2017 IL App (1st) 143274, ¶ 15. For that same reason, Rule 615(b) provides no basis for modification of a fines and fees order. *Id.* ¶¶ 13-15; *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9 (petition for leave to appeal granted; No. 122549 (Nov. 22, 2017)).

¶ 9 Six of defendant's challenges are directed to claiming presentence custody credit, pursuant to section 110-14(a) of the Code of Criminal Procedure of 1963, against fines where the fines, fees, and costs order clearly states that they should be offset by the credit. See 725 ILCS 5/110-14(a) (West 2012) (a defendant incarcerated on a bailable offense, who does not supply bail and against whom a fine is levied, is entitled to \$5 per day credit against the fine for each day spent in presentence custody). The total on the fines and fees order does not reflect the offset.

¶ 10 A defendant may “ ‘piggyback’ ” a section 110-14 claim onto any properly filed appeal, even if the claim is unrelated to the grounds for that appeal.” *Griffin*, 2017 IL App (1st) 143800, ¶ 25 (pet. for leave to appeal granted, No. 122549 (Nov. 22, 2017) (citing *People v. Caballero*, 228 Ill. 2d 79, 88 (2008))). Thus, as we may order “the ministerial correction of a mathematical calculation called for under section 110-14,” these six claims of mathematical error are not forfeited. *People v. Brown*, 2017 IL App (1st) 150203, ¶¶ 36, 40.

¶ 11 Defendant also raises substantive issues regarding whether a certain charge should have been assessed and whether particular assessments categorized as fees are actually fines subject to offset. *Caballero* and section 110-14 do not concern these types of substantive arguments and these claims are, therefore, forfeited. *Id.* ¶ 40.

¶ 12 Nevertheless, because the State does not argue that defendant has forfeited review of his challenge to the assessed fines and fees, it has forfeited any forfeiture argument. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). We will therefore review all of defendant’s claims. We review the propriety of a circuit court’s imposition of fines and fees *de novo*. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 60.

¶ 13 Defendant first argues, and the State correctly concedes, that the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2012)), was improperly assessed and must be vacated because it only applies to traffic, misdemeanor, municipal ordinance, and conservation cases, and is not applicable to his felony conviction. See *People v. Moore*, 2014 IL App (1st) 112592-B, ¶ 46 (\$5 electronic citation fee does not apply to felonies); *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 115 (vacating the fee where the defendant’s offense did not fall into an enumerated category). Accordingly, we vacate defendant’s \$5 electronic citation fee.

¶ 14 Defendant next asserts that he is entitled to a section 110-14 credit of \$5 for each day he spent in presentence custody to be applied against certain fines assessed against him. This credit applies only to “fines” that were imposed after a conviction and does not apply to any other 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’ or ‘cost’ seeks to recoup expenses incurred by the state—to ‘compensat[e]’ the state for some expenditure incurred in prosecuting the defendant.’ ” *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Even if a statute labels an assessment a “fee,” it may still be considered a “fine.” *Id.* at 599. Defendant spent 582 days in presentence custody and is, therefore, entitled to up to \$2,910 in presentence custody credit.

¶ 15 Defendant contends, and the State correctly concedes, that he is entitled to presentence custody credit for the following fines assessed against him that were not offset by his *per diem* credit: \$10 Mental Health Court (55 ILCS 5/5-1101(d-5) (West 2012)); \$5 Youth Diversion/Peer Court (55 ILCS 5/5-1101(e) (West 2012)); \$5 Drug Court (55 ILCS 5/5-1101(f) (West 2012)); \$30 Children’s Advocacy Center (55 ILCS 5/5-1101(f-5) (West 2012)); \$500 controlled substance (720 ILCS 570/411.2(a) (West 2012)); and \$100 Trauma Center Fund (730 ILCS 5/5-9-1.1 (West 2012)). It is well established that these fines are subject to offset. See *People v. Graves*, 235 Ill. 2d 244, 250, 255 (2009) (finding that Mental Health Court, Youth Diversion/Peer Court, and Drug Court assessments are fines); *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009) (finding that Children’s Advocacy Center assessment is a fine); *People v. Jones*, 233 Ill. 2d 569, 588, 592 (2006) (finding that controlled substance assessment and trauma fund charge are fines). Although the fines and fees order specifically provides for this offset, it is not reflected in the final total assessed against defendant. Accordingly, these assessments should be offset by defendant’s presentence custody credit.

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¶ 16 Next, defendant contends that the following fees are actually fines and should be offset by his presentence custody credit: the \$15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2012)); the \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2012)); and the \$2 State's Attorney records automation fee (55 ILCS 5/4- 2002.1(c) (West 2012)). The State agrees that defendant is owed presentence custody credit against the \$15 State Police operations fee and the \$50 court system fee are considered fines, but disputes defendant's other contention.

¶ 17 We agree with the parties that the \$15 State Police operations fee and \$50 court system fee are fines subject to presentence custody credit. See *People v. Brown*, 2017 IL App (1st) 150146, ¶ 36 (State Police Operations assessment is a fine); *People v. Reed*, 2016 IL App (1st) 140498, ¶ 15 (court system fee is a fine). Accordingly, both assessments should be offset by defendant's presentence custody credit.

¶ 18 We agree with the State that the \$2 State's Attorney records automation fee is not a fine subject to offset. It is well settled that this assessment does not compensate the State for prosecuting a defendant and is therefore a fee, not a fine. See *People v. Brown*, 2017 IL App (1st) 142877, ¶¶ 75-76 (citing cases); *contra People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56. Accordingly, the \$2 State's Attorney records automation fee is not subject to offset by defendant's presentence custody credit.

¶ 19 For the foregoing reasons, we vacate the \$5 electronic citation fee and order that the \$10 mental health court, \$5 youth diversion/peer court, \$5 Drug Court, \$30 Children's Advocacy Center, \$500 controlled substance, \$100 Trauma Center Fund, \$15 State Police Operations, and \$50 court system assessments be offset by presentence custody credit. We direct the clerk of the circuit court to modify the fines, fees and costs order accordingly. The judgment of the circuit court is affirmed in all other respects.

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¶ 20 Affirmed as modified.