

2018 IL App (1st) 160500-U

No. 1-16-0500

Order filed December 12, 2018

Third 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. 14 CR 20820
)	
EVANS LEWIS,)	Honorable
)	Maura Slattery Boyle,
Defendant-Appellant.)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's fines, fees and costs order is modified.

¶ 2 Following a bench trial, defendant Evans Lewis was convicted of burglary (720 ILCS 5/19-1(a) (West 2014)), and sentenced to six years' imprisonment. On appeal, defendant contends that various fines and fees were improperly assessed against him. We affirm and correct the mittimus.

¶ 3 Because defendant does not challenge his conviction or sentence, we recite only those facts necessary to our disposition. On November 13, 2014, Lloyd Johnson saw defendant exiting the detached garage of Johnson's home. Defendant was wheeling a garbage can filled with wood flooring material that belonged to Johnson. Johnson went outside to confront defendant, and defendant refused to return the items. Johnson's mother called the police, who arrived shortly thereafter and arrested defendant.

¶ 4 The court found defendant guilty of burglary and sentenced him to six years' imprisonment. The court imposed \$474 in fines and fees. This appeal followed.

¶ 5 On appeal, defendant challenges various fines and fees imposed by the trial court. Defendant concedes that he did not preserve this issue before the trial court, but argues that fines and fees issues are reviewable under the second prong of the plain error doctrine. See Ill. S. Ct. R. 615 (b). The State does not disagree, so we will review the issues for plain error. *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000). The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 6 The parties agree that the \$5 electronic citation fee and \$5 court system fee should be vacated. We agree, and vacate the \$5 electronic citation fee because defendant was not convicted in "any traffic, misdemeanor, municipal ordinance, or conservation case." See 705 ILCS 105/27.3e (West 2014). Likewise, we vacate the \$5 court system fine because defendant was not convicted of a violation of the Illinois Vehicle Code or a similar municipal ordinance. See 55 ILCS 5/5-1101(a) (West 2014).

¶ 7 Next, defendant argues that several assessed fees are instead fines that should be offset by his \$5 per day presentence incarceration credit.

¶ 8 The trial court imposed on defendant \$474 in fines, fees and costs. Section 110-14 of the Code of Criminal Procedure of 1963 (Code) provides that a defendant is entitled to a credit of \$5 toward his fines for each day he was incarcerated prior to sentencing. 725 ILCS 5/110-14(a) (West 2014). Under the plain language of the Code, “the credit applies only to ‘fines’ that are imposed pursuant to a conviction, not to any other court costs or fees.” *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). Whether an assessment is a fine or a fee depends on its purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Fees are “intended to reimburse the state for a cost incurred in the defendant’s prosecution,” whereas fines are punitive in nature and “part of the punishment for a conviction.” *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63 (citing *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). The record reflects that defendant was entitled to credit for 315 days for presentence incarceration. He therefore has \$1575 (315 days multiplied by \$5) credit available toward his fines.

¶ 9 Defendant argues, and the State concedes, that the \$15 State Police operations charge (705 ILCS 105/27.3a(1.5) (West 2014)) and the \$50 court system charge (55 ILCS 5/5-1101(c)(1) (West 2014)) are actually fines that should be offset by defendant’s presentence incarceration credit. We agree that both of these assessments are fines because they do not reimburse the State for expenses incurred in defendant’s prosecution. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31; *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21.

¶ 10 Defendant next asserts that his presentence incarceration credit should apply to the \$190 felony complaint clerk charge (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the \$15 clerk automation charge (705 ILCS 105/27.3a(1) (West 2014)), and the \$15 document storage charge (705 ILCS 105/27.3c(a) (West 2014)). We previously determined these assessments were fees,

as they are “compensatory and a collateral consequence of conviction.” *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006). Defendant asserts that *Tolliver* was wrongly decided because it is contrary to our supreme court’s decision in *Graves*. We previously explained in *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81, that *Tolliver* is consistent with *Graves* because it followed the framework set forth therein to determine whether a charge is a fee or fine.

Accordingly, we decline defendant’s invitation to depart from our previous holdings in *Tolliver* and *Brown*, and conclude defendant’s presentence incarceration credit does not apply to the felony complaint clerk, document storage, and clerk automation fees.

¶ 11 Defendant next argues that his presentence incarceration credit should apply to the \$2 public defender records automation charge (55 ILCS 5/3-4012 (West 2014)), and the \$2 State’s Attorney’s records automation charge (55 ILCS 5/4-2002.1(c) (West 2014)) because they are fines, rather than fees intended to reimburse the State and public defender’s office for costs associated with prosecuting and defending defendant.

¶ 12 In *Brown*, 2017 IL App (1st) 142877, ¶¶ 76, 78, this court determined that the \$2 public defender’s records automation and the \$2 State’s Attorney records automation assessments are fees. We acknowledge that *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, concluded that these charges are fines. However, we follow *Brown* and the weight of authority cited therein and conclude that these assessments are fees and not fines. We therefore find that defendant is not entitled to offset the \$2 State’s Attorney records automation fee nor the \$2 public defender records automation fee.

¶ 13 Defendant also contends that the \$10 mental health court (55 ILCS 5/5-1101(d-5) (West 2014)), the \$5 youth diversion/peer court (55 ILCS 5/5-1101(e) (West 2014)), the \$5 drug court

(55 ILCS 5/5-1101(f) (West 2014)), and the \$30 Children's Advocacy Center (55 ILCS 5/5-1101(f-5) (West 2014)) assessments are fines subject to offset by the presentence incarceration credit. Defendant is correct. *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 18 (drug court assessment is a fine); *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009) (Children's Advocacy Center charge is a fine); *People v. Paige*, 378 Ill. App. 3d 95, 102 (2007) (mental health court and youth diversion/peer court charges are fines). The fines and fees order, however, already correctly reflects on page 1 that these fines are subject to offset by his presentence credit.

¶ 14 In sum, we vacate the \$5 electronic citation and \$5 court system fees, for a new total of \$464. The \$15 State Police operations, \$50 court systems, \$10 mental health court, the \$5 youth diversion/peer court, the \$5 drug court, and the \$30 Children's Advocacy Center assessments are creditable fines that should be offset by defendant's presentence custody credit, a total of \$115. Accordingly, the total fines, fees and costs due from defendant is \$349 (\$464 less \$115 presentence credit). We order the clerk of the circuit court to correct defendant's mittimus accordingly. The judgment of the circuit court is affirmed in all other respects.

¶ 15 Affirmed; mittimus corrected.