

2018 IL App (1st) 160644-U
No. 1-16-0644
Order filed February 27, 2018

Second 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 20889
)	
LAMAR JACKSON,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge, presiding.

ORDER

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

¶ 1 On appeal from his conviction for possession of a controlled substance, defendant Lamar Jackson challenges only certain fines and fees assessed by the trial court, which total \$3549. Although Jackson did not preserve these issues, we address them because the State has not argued forfeiture. *People v. Smith*, 2018 IL App (1st) 151402, ¶ 6.

¶ 2 The parties agree that a \$3000 fine was erroneously assessed under the Cannabis Control Act (720 ILCS 55/10.3(a)(1) (West 2014)) given that Jackson was convicted of possession of

heroin, not cannabis. The parties also agree that a \$5 electronic citation fee (705 ILCS 105/27.3e (West 2014)) was improperly assessed as it applies only in traffic, misdemeanor, municipal ordinance or conservation cases and does not apply to Jackson's felony conviction. We vacate these assessments.

¶ 3 Jackson also challenges certain assessments labeled as fees, which he contends are actually fines against which he is entitled to presentence credit. The State agrees that two of these assessments, the \$50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2014)) and the \$15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2014)) are fines, as this court has consistently held. See *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22; *People v. Brown*, 2017 IL App (1st) 150146, ¶ 36. These assessments are likewise vacated.

¶ 4 We have repeatedly rejected Jackson's assertion that certain other assessments, namely the \$190 felony complaint fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the \$15 clerk automation fee (705 ILCS 105/27.3a(1) (West 2014)), the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)), and the \$25 court services fee (55 ILCS 5/5-1103 (West 2014)) are actually fines against which he is entitled to the per diem credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42 (relying on *Tolliver* and finding the \$190 felony complaint assessment is a fee, not a fine), *pet. for leave to appeal allowed*, No. 122008 (May 24, 2017); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (same re clerk automation fee and document storage fee); *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (same re court services charge fee). Accordingly, these fees are not offset by presentence incarceration credit.

¶ 5 Finally, Jackson contends he is entitled to presentence incarceration credit against the \$2 State's Attorney records automation fee (55 ILCS 5/4-2002.1(c) (West 2014)) and the \$2 public

defender records automation fee (55 ILCS 5/3-4012 (West 2014)). A majority of this panel, as well as other panels in this and other districts, have held that these assessments are fees against which a defendant is not entitled to presentence credit. See *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 47; *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 19; *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17; *People v. Green*, 2016 IL App (1st) 134011, ¶ 46; *People v. Warren*, 2016 IL App (4th) 120721-B; *People v. Bowen*, 2015 IL App (1st) 130698, ¶ 115. We recognize the contrary holding of *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, but respectfully disagree with its reasoning.

¶ 6 We vacate the \$3000 cannabis fine and the \$5 electronic citation fee. Jackson is entitled to presentence incarceration credit against the \$50 court system fee and the \$15 state police operations fee, but not against the \$190 felony complaint fee, the \$15 clerk automation fee, the \$15 document storage fee, the \$25 court services fee, the \$2 State's Attorney records automation fee and the \$2 public defender records automation fees. The fines and fees order should reflect a new total due of \$429. We remand and direct the circuit court to modify the fines and fees order accordingly.

¶ 7 Affirmed as modified, remanded with directions.

JUSTICE HYMAN, concurring in part and dissenting in part:

¶ 8 I concur in the judgment of the court with the exception of Jackson's entitlement to presentence incarceration credit against the State's Attorney and public defender records automation fees. For the reasons articulated in *Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, I believe these charges are fines and for that reason I respectfully dissent from the majority's contrary determination.