

2018 IL App (1st) 161748-U
No. 1-16-1748
Order filed November 14, 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. 15 CR 15980
)	
ANGEL MALDONADO,)	Honorable
)	Dennis J. Porter,
Defendant-Appellant.)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Ellis 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 bench trial, defendant Angel Maldonado was convicted of armed robbery (720 ILCS 5/18-2(a)(1) (West 2014)) and sentenced to nine years' imprisonment. On appeal, defendant raises no claims of error regarding his trial or sentence but challenges only certain assessed fines and fees. We affirm and modify the fines, fees, and costs order.

¶ 3 Defendant was charged by information with armed robbery (720 ILCS 5/18-2(a)(1) (West 2014)) and aggravated unlawful restraint (720 ILCS 5/10-3.1 (West 2014)). The evidence at trial showed that defendant entered a convenience store located at 1701 North Keystone where Mohammad Suliman was employed. Defendant, whom Suliman recognized as a frequent customer, grabbed Suliman's wrist and put a four inch knife to Suliman's back. Defendant demanded money and Suliman gave defendant between \$60 to \$70 dollars from the cash register. Defendant left the store and drove away. Suliman followed defendant outside and wrote down the license plate number of defendant's car. At the police station, Suliman identified defendant from a photo array.

¶ 4 The court found defendant guilty. Prior to sentencing, the court merged the aggravated unlawful restraint count into the armed robbery count. The court then sentenced defendant to nine years' imprisonment and imposed \$449 in fines, fees, and costs.

¶ 5 On appeal, defendant argues that the assessed fines, fees, and costs should be reduced from \$449 to \$105. He argues that: (1) the electronic citation (\$5) fee should be vacated because it was improperly imposed; and (2) pursuant to section 110-14 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-14(a) (West 2016)), he is entitled to presentence custody credit against several fines and assorted other assessments that are labeled "fees" but are actually "fines."

¶ 6 Initially, defendant acknowledges that he did not raise these challenges at trial and they are, therefore, arguably forfeited. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Defendant nonetheless argues that we may reach his arguments regarding fines and fees under the second prong of the plain-error doctrine. In response, the State agrees with defendant that we may

review the claims under plain error. However, we need not decide the issue because the rules of forfeiture and waiver also apply to the State, and where, as here, the State fails to argue that defendant has forfeited the issue, it waives the forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. We review *de novo* the propriety of a court-ordered fine or fee. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22.

¶ 7 First, the parties correctly agree that the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2016)), must be vacated as the fee does not apply to defendant's felony convictions for armed robbery and aggravated unlawful restraint. See 705 ILCS 105/27.3e (West 2016) (fee imposed in any traffic, misdemeanor, municipal ordinance, or conservation cases). Accordingly, we vacate the erroneous charge for the \$5 electronic citation fee.

¶ 8 Defendant next asserts that seven of the assessments imposed against him are fines subject to offset by his presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) (“[T]he credit for presentence incarceration can only reduce fines, not fees.”). A defendant incarcerated on a bailable offense who does not supply bail, and against whom a fine is levied, is allowed a credit of \$5 for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2016). “Broadly speaking, a ‘fine’ is a part of the punishment for a conviction, whereas a ‘fee’ or ‘cost’ seeks to recoup expenses incurred by the State.” *Id.* at 582. The most important factor, therefore, is whether the charge seeks to compensate the State for any costs incurred as a result of prosecuting the defendant. See *People v. Graves*, 235 Ill. 2d 244, 250 (2009); see also *Jones*, 223 Ill. 2d at 600 (“A charge is a fee if and only if it is intended to reimburse the State for some cost incurred in defendant's prosecution.”). Defendant spent 262 days in presentence custody and is, therefore, entitled up to \$1,310 in presentence custody credit.

¶ 9 The parties agree that two of the fees assessed against defendant, the \$50 court system fee (55 ILCS 5/5-1101(c) (West 2016)) and the \$15 state police operations fee (705 ILCS 105/27.3a(1.5) (West 2016)), are actually fines and should be offset by defendant's presentence credit. We concur. See *People v. Blanchard*, 2015 IL App (1st) 132281, ¶ 22 (“[W]e hold that the \$50 Court System fee imposed in this case pursuant to section 5–1101(c) is a fine for which defendant can receive credit for the *** days he spent in presentence custody.”); see *People v. Maxey*, 2016 IL App (1st) 130698, ¶¶ 140–41 (“Since the state operations charge under section 27.3a(1.5) is a fine, defendant is entitled to presentence credit toward it.”).

¶ 10 The parties dispute is thus limited to whether the five remaining charges are fines rather than fees because they do not reimburse the State for the costs incurred in prosecuting defendant. Specifically, defendant argues that the following five charges are, in fact, fines subject to offset by his presentence incarceration credit: the \$190 felony complaint fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)); the \$15 clerk automation fee (705 ILCS 105/27.3a(1) (West 2016)); the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2016)); the \$2 State's Attorney records automation fee (55 ILCS 5/42002.1(c) (West 2016)); and the \$2 public defender records automation fee (55 ILCS 5/3–4012 (West 2016)).

¶ 11 This court has already considered challenges to these assessments and determined that they are fees and, therefore, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006) (“We find that all of these charges are compensatory and a collateral consequence of defendant's conviction and, as such, are considered ‘fees’ rather than ‘fines’ ”); *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41–42 (relying on *Tolliver* and finding the \$190 felony complaint assessment to be a fee); *People v. Brown*, 2017 IL App (1st)

142877, ¶ 81 (finding clerk automation fee and document storage fee are fees not subject to offset by presentence incarceration credit); *Brown*, 2017 IL App (1st) 142877, ¶¶ 73, 75 (finding the State’s Attorney records automation fee and Public Defender records automation fee to be fees); *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16–17 (same); *Bowen*, 2015 IL App (1st) 132046, ¶¶ 6265 (finding the State’s Attorney records automation assessment and the public defender records automation assessment are both fees because they are meant to reimburse the State for expenses related to automated record-keeping systems). We decline defendant’s invitation to revisit these rulings. Accordingly, we hold that these charges are fees not subject to offset by presentence incarceration credit.

¶ 12 In reaching this conclusion, we note that, in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47–56, a panel of this court found that the State’s Attorney and public defender records automation fees were, in fact, fines that should be offset by the presentence credit. However, we follow the prevailing authority in *Brown*, *Reed*, and *Bowen* and determine that the State’s Attorney records automation charge and the public defender records automation charge are fees, and, therefore, not subject to offset by presentence custody credit.

¶ 13 In sum, we vacate the erroneously assessed \$5 electronic citation fee; we also offset \$65 in fines that are subject to defendant’s presentence credit. However, we find that the \$190 felony complaint fee, the \$15 clerk automation fee, the \$15 document storage fee, the \$2 State’s Attorney records automation charge, and the \$2 public defender records automation charge are fees not subject to presentence incarceration credit. The fines, fees, and costs order should reflect a new total due of \$379. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we direct the clerk of the circuit court to modify the fines, fees, and costs order accordingly.

No. 1-16-1748

¶ 14 Affirmed; fines, fees, and costs order modified.