2018 IL App (1st) 161921-U
No. 1-16-1921
Order filed October 22, 2018

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook
	)	County.
Plaintiff-Appellee,	)	
	)	No. 11 CR 04288
v.	)	
	)	
CARVEL SIMPSON,	)	Honorable Luciano Pancini,
	)	Judge Presiding.
Defendant-Appellant.	)	

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's sentence of 24 years' imprisonment for possession of a controlled substance is affirmed over his contention that his sentence is excessive in light of certain mitigating factors. The order assessing fines, fees and costs is modified.

¶ 2 Following a bench trial, defendant Carvel Simpson was convicted of possession of a controlled substance (cocaine) (720 ILCS 570/402(a)(2)(A) (West 2012)) and sentenced, based on his background, as a Class X offender to 24 years' imprisonment. On appeal, defendant contends that his sentence is excessive and that the trial court erred in imposing certain fines and fees. We affirm and modify the order assessing fines, fees and costs.

¶ 3 Defendant was charged, by indictment, with two counts of possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2012)) and two counts of possession of a controlled substance (720 ILCS 570/402(a)(2)(A) (West 2012)). The latter two counts alleged that defendant knowingly possessed 15 or more grams but less than 100 grams of a substance containing cocaine. Defendant waived his right to a jury trial and the case proceeded to a bench trial. Because defendant does not challenge the sufficiency of the evidence to sustain his conviction we recount the facts to the extent necessary to resolve the issues raised on appeal.

¶ 4 The facts adduced at trial show that on February 16, 2011, Detective Mario Cole, along with several members of the Chicago Heights Police Department, went to an address on the 1500 block of Shields Avenue in Chicago Heights to execute a search warrant for the second floor apartment. Cole was the surveillance officer and was positioned in a parking lot just south of Shields. Cole was using binoculars to aid his vision. At approximately 4:30 p.m., defendant, a woman, and a small child exited the rear door of the building. Defendant walked to a silver car and entered through driver's side while the woman and the small child entered through passenger door. Defendant drove away and Cole relayed defendant's direction of travel to his fellow officers. Cole repositioned himself to the rear of the building to make sure no one entered the apartment. Beside defendant, the woman and the child, Cole did not see another person enter or exit the building.

¶ 5 On cross-examination, Cole acknowledged he kept surveillance on the house for a half an hour before he saw defendant emerge. During that time, Cole did not see defendant engage in any narcotic transactions. The woman that was with defendant was Quintana Harris and the child was a three to four year old girl.

¶ 6 Detective Hahn of the Chicago Heights Police Department testified that on February 16, 2011, he was on duty and assigned to the "take down car" or "enforcement vehicle." Hahn was working with two partners and was in uniform. He was in radio contact with his fellow officers. Hahn conducted a traffic stop of a silver car that defendant was driving. He learned that defendant had a suspended driver's license and placed him under arrest. Hahn conducted an "inventory search" of the car and found a digital scale in the trunk of the car. Based on Hahn's experience as a police officer, he testified that digital scales are used in narcotics packaging.

¶ 7 On cross-examination, Hahn acknowledged that defendant was not the registered owner of the car and was with his girlfriend and a young girl when the car was stopped. He was not aware if the scale was in working order or if there was any narcotics residue on the scale. He acknowledged defendant was not engaged in any narcotics activity when he was stopped.

¶ 8 Detective Anthony Bruno of the Chicago Heights Police Department testified he was the affiant of the search warrant and was working with Officers Hahn and Cole on February 16, 2011. Bruno was on the entry team. Prior to executing the warrant, Bruno received information from Cole that defendant was driving a car and in the vicinity of the 1600 block of Shields. Bruno observed as defendant was placed under arrest and transported to the Chicago Heights Police Station. Defendant was searched and $437 was recovered from his pockets, along with two cell phones. Bruno returned to defendant's apartment to execute the search warrant. The apartment had two bedrooms, one of which Bruno determined belonged to a small child based on the bed and furnishings. The second bedroom was an adult bedroom. From underneath the bed in the adult bedroom, Bruno recovered a black canvas "Conair bag." Inside the bag, there were two knotted clear plastic bags. One of these bags, contained a large off-white, rock-like substance

that Bruno suspected to be crack cocaine. The second knotted bag contained 50 yellow-tinted zip-lock bags and 40 blue zip-lock bags, each containing suspect crack cocaine. Bruno testified there were 600 more unused zip-lock bags, staples, a staple gun and a social security card bearing defendant's name recovered from the "Conair bag." Bruno also recovered from a nightstand in the adult bedroom: several pieces of United States Mail with defendant's name and the address of the residence listed in the search warrant; a pawn shop receipt in defendant's name and to the address of the location listed in the warrant; and $90.

¶ 9 On cross-examination, Bruno testified that Quintana Harris also resided in the apartment. When defendant was arrested, Harris was also transported to the police station where she remained in the lobby while the officers were processing defendant. Bruno did not submit the "Conair bag" for fingerprints or DNA testing, nor did he check the cell phones recovered from defendant for correspondence that would suggest narcotics transactions. He also did not have the scale that was recovered from the trunk of the car tested for residue. Bruno did not recover a lease agreement from the apartment. Bruno checked with Law Enforcement Agencies Data System (LEADS) and learned that defendant was paroled to the Shields address. Bruno acknowledged that defendant had an Illinois State Identification Card that was issued in November of 2010 and listed an address in Ford Heights. Both men's and women's clothing was in the apartment, but that he did not note the clothing in his police report.

¶ 10 The parties stipulated that the suspect crack cocaine that was recovered from the "Conair bag" was submitted to the Illinois State Police Crime lab, and had a total estimated weight of 88.3 grams and tested positive for 61.4 grams of cocaine. The State rested. Defendant's motion

for a directed finding was denied. The defendant rested. The court found defendant guilty on all counts.

¶ 11 Prior to sentencing, the State indicated that it would be seeking a sentence of natural life based on defendant's two prior Class X convictions for armed robbery. Defendant filed a motion for a new trial. After hearing arguments, the court found that there was "no doubt defendant possessed the drugs," but reversed its prior decision and found defendant not guilty of the possession with intent to deliver in counts one and two.

¶ 12 A presentence investigation report (PSI) was ordered. At sentencing, the State argued in aggravation that defendant, based on his background, was subject to mandatory Class X sentencing and asked for a sentence of 30 years' imprisonment. In mitigation, defense counsel argued that defendant was a family man, who lost his father to cancer and whose mother is currently battling cancer. Since his incarceration, defendant has also been diagnosed with cancer. Trial counsel stressed the non-violent nature of the crime and defendant's achievements while he has been incarcerated. Counsel asked for a sentence toward the minimum range. Defendant also spoke in allocution, expressing his love for his daughter, his health concerns, and his desire to continue his education upon release.

¶ 13 In announcing sentence, the court read defendant's (PSI) report into the record and noted that defendant's entire life has been "in and out of prison." The court pointed out that defendant was "basically a career criminal," who was now subject to Class X sentencing. The court noted that defendant received one year conditional discharge for theft in 1990; 1410 probation for a possession of a controlled substance case in 1991 that was violated; an armed robbery conviction in which he received seven years' imprisonment in 1993; a conviction for criminal trespass to

vehicle in 1996 where he received ten days in jail; a second armed robbery conviction from 1999 where he received eight years' imprisonment consecutive to eight years' imprisonment for a delivery of a controlled substance conviction also from 1999; a 2002 conviction for a possession of controlled substance where he received three years' imprisonment; a 2004 court supervision for criminal trespass to property; a 2004 conviction for possession of a firearm by a felon where he received seven years' imprisonment; and a 2005 conviction for delivery of a controlled substance where he received three years' imprisonment. The court found that the number of years defendant had previously spent in prison has not had an impact on him given his continued criminal conduct. The court acknowledged that defendant "has never caused serious injury," but found it necessary to impose a sentence that would "deter others in doing the same type of activity that [defendant] has engaged in over and over." The court sentenced defendant to 24 years' imprisonment. Defendant's motion to reconsider sentence was denied.

¶ 14 On appeal, defendant first contends that his 24-year sentence is excessive because the court failed to consider certain mitigating factors.

¶ 15 A trial court's sentencing decisions are entitled to great deference on review and a reviewing court will only reverse a sentence when it has been demonstrated that the trial court abused its discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A trial court has broad discretionary powers in imposing a sentence because it has a superior opportunity "to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly

considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 16 In reviewing a defendant's sentence, this court will not reweigh these factors and substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *People* v. *Busse*, 2016 IL App (1st) 142941, ¶ 20. Moreover, a sentence which falls within the statutory range is presumed to be proper and " 'will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 17 Here, we find that the trial court did not abuse its discretion in sentencing defendant to 24 years' imprisonment. Defendant's possession of a controlled substance conviction is a Class 1 felony and has a sentencing range of 4 to 15 years' imprisonment. (720 ILCS 570/402(a)(2)(A) (West 2012)). However, because of defendant's prior convictions, he was subject to a Class X sentence with a range of six to 30 years' imprisonment. (730 ILCS 5/5-4.5-25(a) (West 2012)). Defendant's 24-year sentence was within the permissible statutory range and thus it is presumed proper. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. "To rebut this presumption, defendant must make an affirmative showing that the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Defendant has failed to make such a showing.

¶ 18 Defendant does not dispute that his 24-year sentence fell within the applicable sentencing range. Rather, he argues that the trial court, in imposing sentence, did not consider: 1) his mostly non-violent background; 2) that he tried to improve himself in jail; 3) his remorse; 4) that he was

involved with his children and family; 5) that a lengthy sentence does not support penological goals; 6) the affect of lengthy incarceration for non-violent offenses has on the public and the community; and 7) the cost of incarceration. He requests this court reduce his sentence to a more appropriate term of years or remand the matter for a new sentencing hearing.

¶ 19 Contrary to defendant's argument, the record shows that this mitigation evidence was presented to the trial court before it imposed its sentence. As noted above, we presume that the trial court properly considered all mitigation evidence. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. While a defendant's potential for rehabilitation must be considered, the trial court is not required to give more weight to a defendant's chance of rehabilitation than to the nature of the crime (*People v. Evans*, 373 Ill. App. 3d 948, 968 (2007)) or to explain the value the court assigned to each factor in mitigation and aggravation (*People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010)). The sentencing court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factor either require a minimum sentence or preclude a maximum sentence. *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123.

¶ 20 Here, the record shows that, in imposing sentence, the trial court considered the factors in aggravation and mitigation, and ultimately determined that the seriousness of the offense, the need to deter others, and defendant's lengthy criminal history outweighed the mitigating factors and warranted a 24-year sentence. At sentencing, the court was presented with defendant's PSI report, which included his age and extensive criminal history. The court expressly noted that it considered the PSI report and even read the report into the record. Defense counsel emphasized defendant's family history and lack of violent background. Counsel also emphasized defendant's work history and educational achievements both in obtaining his GED and his accomplishments

in obtaining certificates while he was incarcerated. Counsel stressed defendant's troubled family health history with cancer as well as defendant's diagnosis with the disease while he was incarcerated. Defendant also presented a lengthy statement in allocution detailing his love for his family, his troubled health history, and his desire to continue his education upon release. However, the court noted that the number of years defendant had spent in prison has not had an impact on him and found it necessary to impose a sentence that would "deter others in doing the same type of activity that [defendant] has engaged in over and over."

¶ 21 Given this record, defendant essentially asks us to reweigh the sentencing factors and substitute our judgment for that of the trial court. This we cannot do. See *Busse*, 2016 IL App (1st) 142941, ¶ 20 (a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently). In light of this record, defendant cannot show that the court failed to consider the mitigating factors in question and abused its discretion in imposing sentence.

¶ 22 In reaching this conclusion, we are not persuaded by defendant's reliance on the special concurrence in *People v. Bryant*, 2016 IL App (1st) 140421 (Justice Hyman specially concurring), urging trial courts to explain how they came to their conclusion on a sentence. As mentioned, the record shows that the trial court expressly considered the factors set forth in aggravation and mitigation. The court indicated that defendant's sentence was based on his criminal history and essentially a deterrence to others. Although the trial court never specifically addressed the cost of defendant's incarceration, the court is presumed to have considered all relevant factors in aggravation and mitigation absent some contrary indication other than the

sentence imposed. *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48. There is no such contrary indication here.

¶ 23 Defendant next contends that the $2,807 in fines and fees imposed against him was erroneous because: two of the fees were improperly assessed and should be vacated; and several of the assessments labeled as fees were actually fines that are subject to offset by his $5-per-day presentence incarceration credit.

¶ 24 In setting forth his argument, defendant notes that he did not object to the imposition of the fines, fees and costs at the time of sentencing, nor was the issue preserved in his motion to reconsider his sentence. As such, he is raising the issue for the first time on direct appeal. In doing so, defendant acknowledges that the issue has been forfeited, but suggests we review the matter under the second prong of the plain error doctrine or under Illinois Supreme Court Rule 615(b).

¶ 25 Defendant's request for the *per diem* monetary credit is not merely requesting credit that is due against his fines but, rather, is raising a substantive issue regarding whether the assessments labeled as fees are fines, and therefore, is subject to forfeiture. See *People v. Brown*, 2017 IL App (1st) 150203, ¶¶ 40-41. Nor are defendant's challenges reviewable under the plain error doctrine (*People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017)), or as a claim of ineffective assistance of counsel (*People v. Rios-Salazar*, 2017 IL App (3d) 150524, ¶ 8 (failure to object to fines and fees is not an error of constitutional magnitude that will support a claim of ineffectiveness), *pet. for leave to appeal granted*, No. 123052 (Mar. 21, 2018)). However, the rules of forfeiture and waiver also apply to the State, and where the State fails to argue that defendant forfeited the issue, it waives the

forfeiture. *People v. Bridgeforth*, 2017 IL App (1st) 143637, ¶ 46. Here, although the State acknowledges the forfeiture, it asserts that pursuant to *People v. Cox*, 2017 IL App. (1st) 151536, ¶¶ 94-102, this court may reach the issues. By this statement, the State has waived any forfeiture argument. *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7. We therefore address the merits of defendant's claims. The propriety of the imposition of fines and fees is a question of law which we review *de novo*. *People v. Bryant*, 2016 IL App (1st) 140421, ¶ 22

¶ 26 Defendant first argues and the State concedes that the $250 DNA Analysis Fee (730 ILCS 5/5-4-3(j)(West 2012)) was improperly assessed and should be vacated because due to defendant's prior incarcerations, his DNA would have already been taken. In *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38, this court found that "the DNA analysis and fee requirement was added by a 1997 amendment to section 5-4-3 of the Unified Code of Corrections (Pub. Act 90-130 (eff. Jan. 1 1998)) (Amending 730 ILCS 5/5-4-3 (West 1996)). Thus, the requirement was in effect when defendant was convicted of armed robbery under case 98 CR 13012. "Because section 5-4-3 mandates that anyone convicted of a felony must submit a DNA sample and be assessed the DNA analysis fee, we presume that the circuit court imposed this requirement as part of defendant's sentence following at least one of his prior convictions." *Leach*, 2011 IL App (1st) 090339, ¶ 38 (citing *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996) ("we ordinarily presume that the trial judge knows and follows the law unless the record indicates otherwise.")). Because the record demonstrates that defendant was convicted of more than one felony after section 5-4-3 became law, "it is sufficient for the limited purpose of demonstrating that the fee has previously been assessed." *Leach*, 2011 IL App (1st) 090339, ¶ 38. Therefore, we agree that the imposition of the fee was in error and should be vacated.

¶ 27 Next, defendant argues and the State concedes that the $5 Electronic Citation fee (705 ILCS 105/27.3e (West 2014)) should be vacated because the fee does not apply to felonies. Defendant was convicted of a felony and this assessment does not apply to felonies. *People v. Smith*, 2018 IL App (1st) 151402, ¶ 12 (The electronic citation fee does not apply to felonies). Therefore, this fee is inapplicable to defendant's felony conviction for possession of a controlled substance. Accordingly, we vacate the erroneous charge.

¶ 28 Defendant further argues that several of the assessments labeled as fees were actually fines that are subject to offset by his $5-per-day presentence incarceration credit. 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 2014). Here, defendant received credit for 1,632 days in custody prior to sentencing. Therefore, at $5-per-day, he was entitled to $8,160 of presentencing credit.

¶ 29 Defendant argues that he is entitled to use this credit to offset the applicable fines assessed against him. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) ("[T]he credit for presentence incarceration can only reduce fines, not fees."). "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. A "fine" is punitive in nature and is imposed as part of a sentence on a person convicted of a criminal offense. *People v. Graves*, 235 Ill.2d 244, 250 (2009). A "fee" is a charge that seeks to recoup expenses incurred by the State in prosecuting the defendant. *Id*. The legislature's label for a charge is strong evidence of whether the charge is a fee or a fine, but the most important factor is whether the charge seeks to compensate the State for any cost incurred as a result of prosecuting the defendant. *Id*.

¶ 30 The parties agree that four fines assessed to defendant should be offset by his presentence incarceration credit: the $30 Children's Advocacy Center assessment (55 ILCS 5/5-1101(f-5) (West 2012)); the $25 Drug Traffic Prevention Fund (730 ILCS 5/5-9-1.1(e) (West 2012)); the $2,000 Controlled Substance Fine (720 ILCS 570/411.2(a) (West 2012)); and the $5 Spinal Cord Injury Paralysis Cure Research Trust Fund (730 ILCS 5/5-9.1(c) (West 2012)). We agree with the parties that these are fines and as such, defendant is entitled to use his $8,160 in presentence custody credit to offset his $2,060 in fines. (See *People v. Jones,* 397 Ill. App. 3d 651, 660-61 (2009) ($30 Children's Advocacy Center Assessment is a fine); *People v. Devine,* 2012 IL App (4th) 101028, ¶ 10 ($25 Drug Traffic Prevention Fund listed as a fine); *People v. Jones,* 223 Ill. 2d 569, 592, 600 (2006) ($2,000 Controlled Substance Fine and $5 Spinal Cord Injury Trust Fund are fines for purposes of presentence credit).

¶ 31 Defendant also argues that the $15 State Police Operations fee (705 ILCS 105/27.3a-1.5 (West 2012)), the $2 State's Attorney Records Automation fee (55 ILCS 5/4-2002.1(c) (West 2012)), the $190 Felony Complaint Filing fee (705 ILCS 105/27.2(w)(1)(A) (West 2012)), the $15 Clerk Automation fee (705 ILCS 105/27.3a(1) (West 2012)), the $15 Document Storage fee (705 ILCS 105/27.3c(a) (West 2012)), the $10 Arrestee's Medical Costs Fund Charge (730 ILCS 125/17 (West 2012)), the $10 Probation and Court Services Operations Fee (705 ILCS 105/27.3a(1.1) (West 2012)), and the $50 Court Systems fee (55 ILCS 5/5-1101(c)(1) (West 2012)) are all fines and therefore, are subject to the $5-per-day presentence incarceration credit.

¶ 32 The State concedes that the $15 State Police Operations fee, the $10 Arrestee Medical Cost Fund Charge, and the $50 court system fee are all fines subject to be offset. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (holding the State Police Operations Assistance fee

does not reimburse the State for costs incurred in defendant's prosecution); *People v. Strong*, 2016 IL App (3d) 140418, ¶ 7 (the $10 arrestee's medical cost fund assessment is a fine); but see *People v. Jones*, 397 Ill. App 3d 651, 664 (2009) (the $10 arrestee's medical cost fund is a fee and not a fine and cannot be offset by credit); *People v. Brown*, 2017 IL App (1st) 150146, ¶ 37 (defendant may apply his presentence incarceration credit toward the $50 Court System Fee). We agree with the parties that these three charges, totaling $75, should be offset by defendant's presentence incarceration credit.

¶ 33 As to the remaining assessments, defendant argues that a portion of his presentence custody credit should be applied to the $2 State's Attorney records automation charge because this assessment is a fine and not a fee as it does not reimburse the State for costs incurred in prosecuting a particular defendant. 55 ILCS 5/4-2002.1(c) (West 2012). However, in addressing both the $2 Public Defender records automation charge and the $2 State's Attorney records automation charge this court has held: "[T]he bulk of legal authority has concluded that both assessments are fees rather than fines because they are designed to compensate those organizations for the expenses they incur in updating their automated record-keeping systems while prosecuting and defending criminal defendants." *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38 (consolidating cases); see contra *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (finding the assessments are fines, not fees). Accordingly, defendant is not entitled to presentence custody credit toward this assessment.

¶ 34 Defendant maintains that the $190 felony complaint filing fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), the $15 automation fee (705 ILCS 105/27.3a(1),(1.5) (West 2012)), the $25 document storage fee (705 ILCS 105/27.3c(a) (West 2012)), and the $10

Probation and Court Services Operations fee (705 ILCS 105/27.3a(1.1) (West 2012)) are all fines subject to presentence incarceration credit. This court has already considered challenges to the felony complaint filing fee; automation fee; and the document storage fee and found that they are fees as they "are compensatory and a collateral consequence of defendant's conviction." *People v. Smith*, 2018 IL App (1st) 151402, ¶¶ 15, 16. These charges represent part of the costs incurred for prosecuting a defendant and are, therefore, not fines subject to offset by presentence custody credit. See *People v. Graves*, 235 Ill. 2d 244, 250 (2009); *Tolliver*, 363 Ill. App. 3d at 97.

¶ 35 We have also held that the Probation and Court Services Operations fee is a fee and not subject to be offset whereas like here, the probation department was involved in preparing a presentence investigation report for the defendant making the assessment a fee to recover a cost actually incurred in the defendant's prosecution. *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 56; see also *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 27; *People v. Staake*, 2016 IL App (4th) 140638, ¶ 106; *People v. Bradford*, 2014 IL App (4th) 130288, ¶¶ 38-40, *rev'd on other grounds*, 2016 IL 118674; but see *People v. Carter*, 2016 IL App (3d) 140196, ¶¶ 56-57 (finding, contrary to the Fourth District cases, that the probation/court services assessment is a fine because the assessment is imposed regardless of whether the defendant used probation office's services). Thus, we find that this is a fee and defendant is not entitled to use his presentence custody credit to offset this assessment.

¶ 36 In sum, the $250 DNA Analysis Fee and the $5 Electronic Citation Fee are vacated; the $50 court system fee, the $15 State Police operations fee, the $10 Medical Costs fee, the $30 Children's Advocacy Assessment, the $25 Drug Traffic Prevention Fund charge, the $2,000 Controlled Substance Fine, and the $5 Spinal Cord Injury Trust fund, totaling $2,135 are offset

by defendant's presentence custody credit. Accordingly, the remaining amount of fees not subject to be offset by defendant's presentence credit is $417. We direct the clerk of the circuit court to modify the fines, fees and costs order accordingly.

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