

No. 1-16-2014

**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 DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS, )  
 ) Appeal from the  
 ) Circuit Court of  
 Plaintiff-Appellee, ) Cook County.  
 )  
 v. ) No. 15 CR 19981  
 )  
 GREGORY WILLIAMS, ) Honorable  
 ) Matthew E. Coghlan,  
 Defendant-Appellant. ) Judge Presiding.

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PRESIDING JUSTICE MIKVA delivered the judgment of the court.  
Justices Pierce and Walker concurred in the judgment.

**ORDER**

¶ 1 *Held:* The fines, fees, and costs order is modified.

¶ 2 Following a bench trial, defendant Gregory Williams was found guilty of possession of a controlled substance (heroin) (720 ILCS 570/402(c) (West 2014)) and sentenced to three years' imprisonment. He was further assessed fines and fees in the amount of \$1024. On appeal, Mr. Williams argues several fees are actually fines, subject to offset by presentence incarceration credit. We direct the fines, fees, and costs order to be modified.

¶ 3

## I. BACKGROUND

¶ 4 Mr. Williams was charged with possession of a controlled substance with intent to deliver and delivery of a controlled substance stemming from events occurring on November 9, 2015. At trial, Chicago police officers testified that Mr. Williams was observed engaging in an apparent drug transaction with another individual. An officer observed Mr. Williams speak with the individual, walk to a nearby electrical box, retrieve “a small item,” and hand the item to the individual in exchange for currency. Officers detained Mr. Williams and recovered five small green-tinted Ziploc bags containing suspect heroin from the electrical box. The parties stipulated that a forensic scientist would testify that the bags recovered from the electrical box tested positive for 3.6 grams of heroin.

¶ 5 The trial court found Mr. Williams guilty of possession of a controlled substance (less than 15 grams of heroin), the lesser-included offense of the charged possession of a controlled substance with intent to deliver. It found Mr. Williams not guilty of delivery of a controlled substance. The court sentenced Mr. Williams to three years’ imprisonment, awarded him 226 days of presentence incarceration credit, and imposed fines and fees in the amount of \$1024. After Mr. Williams’s written motion to reconsider sentence was denied, he filed a timely notice of appeal.

¶ 6

## II. ANALYSIS

¶ 7 On appeal, Mr. Williams argues his presentence incarceration credit should apply to several fines, and various fees are actually fines subject to presentence incarceration credit. Mr. Williams did not raise his challenge to the fines and fees in the trial court but asserts we may review the issue under the plain-error doctrine and our supreme court’s decisions in *People v. Caballero*, 228 Ill. 2d 79 (2008), and *People v. Lewis*, 234 Ill. 2d 32, 48 (2009). The State

acknowledges that the issue has been forfeited but agrees that we may address the merits of Mr. Williams's challenges to the fines and fees order pursuant to *Caballero* and *Lewis*. We will address the merits of Mr. Williams's challenge to the fines and fees. See *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 23. We review *de novo* the propriety of a court-ordered fine or fee. *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 8 A defendant incarcerated on a bailable offense who does not post bail and against whom a fine is imposed is allowed a \$5 credit for each day spent in presentence custody. 725 ILCS 5/110-14(a) (West 2014). Mr. Williams spent 226 days in presentence custody and is therefore entitled to a \$1130 credit to offset certain imposed fines.

¶ 9 Mr. Williams asserts, and the State agrees, that his credit should be applied to the following fines: the \$10 mental health court fine (55 ILCS 5/5-1101(d-5) (West 2014)), the \$5 youth diversion/peer court charge (55 ILCS 5/5-1101(e) (West 2014)), the \$5 drug court fine (55 ILCS 5/5-1101(f) (West 2014)), the \$30 children's advocacy center assessment (55 ILCS 5/5-1101(f-5) (West 2014)) and the \$500 controlled substance fine (720 ILCS 570/411.2(a)(4) (West 2014)). Mr. Williams's fines and fees order already reflects that these fines should be offset by the credit. The order also specifically indicates Mr. Williams should be given credit for 226 days spent in presentence incarceration. However, it does not reflect whether Mr. Williams actually received this credit. Therefore, we direct the trial court to modify the fines and fees order to reflect this credit. See *Mullen*, 2018 IL App (1st) 152306, ¶ 58.

¶ 10 Mr. Williams argues several fees are actually fines, subject to offset by presentence incarceration credit. See *People v. Jones*, 223 Ill. 2d 569, 599 (2006) ("the credit for presentence incarceration can only reduce fines, not fees"). Whether a charge is characterized as a fine or a fee depends upon its purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Fees reimburse the

State “for a cost incurred in the defendant’s prosecution.” *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63. Fines, on the other hand, are punitive in nature and are “part of the punishment for a conviction.” *Id.*

¶ 11 Mr. Williams is entitled to offset the \$15 state police operations charge with presentence incarceration credit. Mr. Williams argues, and the State correctly concedes, the \$15 state police operations charge (705 ILCS 105/27.3a(1.5) (West 2014)) is actually a fine subject to presentence incarceration credit. See *People v. Brown*, 2017 IL App (1st) 150146, ¶ 36 (finding the \$15 state police operations charge to be a fine subject to offset by the credit).

¶ 12 We disagree with Mr. Williams’s additional claims that the \$15 clerk automation fee (705 ILCS 105/27.3a(1) (West 2014)) and the \$15 document storage fee (705 ILCS 105/27.3c(a) (West 2014)) are fines subject to presentence incarceration credit. This court has already considered challenges to these assessments and determined they are fees and, therefore, not subject to presentence incarceration credit. See *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006); *People v. Brown*, 2017 IL App (1st) 142877, ¶ 81 (relying on *Tolliver* and finding clerk automation fee and document storage fee are fees).

¶ 13 In his reply brief, Mr. Williams argues *Tolliver* was decided before our supreme court’s decision in *Graves*, and its analysis is contrary to that of our supreme court and thus no longer persuasive. We disagree. The court in *Graves* held that, for an assessment to be characterized as a fee, it must reimburse the State for some costs incurred in prosecuting the particular defendant. *Graves*, 235 Ill. 2d at 250. This court used the same reasoning in *Tolliver*, finding the charges are fees as they do represent a part of the cost incurred in prosecuting a defendant. See *Tolliver*, 363 Ill. App. 3d at 97 (“[w]e 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’ ”);

see also *Brown*, 2017 IL App (1st) 142877, ¶ 81 (holding *Tolliver* is consistent with *Graves*). Therefore, we continue to hold that these charges are fees not subject to offset by presentence incarceration credit.

¶ 14 We further disagree with Mr. Williams's assertion that 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)) are fines because they do not compensate the State for prosecuting Mr. Williams. This court has previously held that the \$2 State's Attorney records automation fee and the \$2 public defender records automation fee are not fines and thus not subject to presentence custody credit. See *Brown*, 2017 IL App (1st) 142877, ¶¶ 75-78 (finding the State's Attorney records automation and the public defender records automation fee are fees); *People v. Reed*, 2016 IL App (1st) 140498, ¶¶ 16-17 (same). Although we recognize that in *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56, the court found them to be fines, we follow *Brown* and *Reed* and determine the State's Attorney records automation fee and the public defender records automation fee are fees, not subject to offset by presentence custody credit.

¶ 15

### III. CONCLUSION

¶ 16 For the reasons set forth above, we find the \$15 state police operations charge is a fine subject to offset by Mr. Williams's presentence incarceration credit. Including the other \$550 in fines already listed on the fines and fees order as subject to offset, Mr. Williams has a total of \$565 in fines that are subject to and completely offset by his \$1130 in available credit. In sum, the final amount due from Mr. Williams is \$459 (\$1024 minus \$565 credit). We direct the trial court to modify the fines, fees, and costs order accordingly.

¶ 17 Affirmed as modified.