

2018 IL App (1st) 162408-U  
No. 1-16-2408  
Order filed November 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).

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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 16868
	)	
CHRISTOPHER WATSON,	)	Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge, presiding.

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

**ORDER**

¶ 1 *Held:* The fines, fees, and costs order is corrected to reflect presentence custody credit against applicable fines.

¶ 2 Following a jury trial, defendant Christopher Watson was convicted of possession of a controlled substance (PCS) (720 ILCS 570/402(c) (West 2014)) and sentenced to 180 days in jail and 12 months of probation. On appeal, Watson does not challenge his conviction or sentence, but contends only that the fines, fees, and costs order should be corrected to apply *per diem*

presentence custody credit to numerous assessed fines. We order correction of the fines, fees, and costs order.

¶ 3 We need not discuss the facts of Watson’s offense or the evidence presented at trial. Watson was assessed \$489 in fines, fees, and costs. At the sentencing hearing, defense counsel indicated that Watson had been in presentence custody for 326 days. The written order assessing fines, fees, and costs does not reflect the number of days of presentence custody and, while it includes a preprinted notation that “Allowable credit toward fine will be calculated,” does not specify the amount of monetary credit Watson would receive.

¶ 4 Watson contends that this court should grant him \$5-per-day presentence custody credit against 11 assessments. Although Watson did not preserve these claimed errors, the State does not urge forfeiture and thus has waived that argument. *People v. Brown*, 2018 IL App (1st) 160924, ¶ 25; *People v. Smith*, 2018 IL App (1st) 151402, ¶ 7. Further, section 110-14(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/110-14(a) (West 2016)) confers a statutorily mandated benefit to all defendants that cannot be waived and may be raised for the first time on appeal (see *People v. Caballero*, 228 Ill. 2d 79, 83 (2008)). Accordingly, we will address Watson’s claims. Our review of the propriety of the trial court’s imposition of fines and fees is *de novo*. *Brown*, 2018 IL App (1st) 160924, ¶ 25; *Smith*, 2018 IL App (1st) 151402, ¶ 7.

¶ 5 Under section 110-14(a) of the Code, an offender who has been assessed one or more fines is entitled to a \$5-per-day credit for time spent in presentence custody as a result of the offense for which the sentence was imposed. 725 ILCS 5/110-14(a) (West 2016). The presentence custody credit applies only to reduce fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 599 (2006). A “fine” is punitive in nature, while a “fee” is assessed in order to compensate the

State or recoup expenses incurred by the State in prosecuting a defendant. *People v. Mullen*, 2018 IL App (1st) 152306, ¶ 21. The parties agree that Watson spent 326 days in presentence custody and, therefore, he is entitled to up to \$1,630 in presentence custody credit against his fines.

¶ 6 Watson argues, and the State concedes, that he is entitled to credit against four assessments that are designated on the fines, fees, and costs order as “FINES OFFSET by the \$5 per-day pre-sentence incarceration [credit].” These fines are: the \$10 Mental Health Court fine (55 ILCS 5/5-1101(d-5) (West 2016)); the \$5 Youth Diversion / Peer Court fine (55 ILCS 5/5-1101(e) (West 2016)); the \$5 Drug Court fine (55 ILCS 5/5-1101(f) (West 2016)); and the \$30 Children’s Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2016)). We accept the State’s concession and hold that these assessments are fines against which Watson can receive \$5-per-day credit for the time he spent in presentence custody. See *People v. Price*, 375 Ill. App. 3d 684, 700-01 (2007) (\$10 mental health court fine and \$5 youth diversion / peer court fine); *People v. Unander*, 404 Ill. App. 3d 884, 886 (2010) (\$5 drug court fine); *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009) (\$30 Children’s Advocacy Center fine). We order the circuit court to correct the fines, fees, and costs order to reflect this credit.

¶ 7 Watson further argues that he is entitled to credit against seven assessments that are designated on the fines, fees, and costs order as “FEES AND COSTS *NOT* OFFSET BY THE \$5 PER-DAY PRE-SENTENCE INCARCERATION CREDIT.” (Emphasis in original.) These fees are (in order of listing on the preprinted fines, fees, and costs form): the \$190 Felony Complaint Filed (Clerk) fee (705 ILCS 105/27.2a(w)(1)(A) (West 2016)); the \$25 Automation (Clerk) fee (705 ILCS 105/27.3a-1 (West 2016)); the \$15 State Police Operations Fee (705 ILCS 27.3a-1.5

(West 2016)); the \$2 Public Defender Records Automation Fee (55 ILCS 5/3-4012 (West 2016)); the \$2 State's Attorney Records Automation Fee (55 ILCS 5/4-2002.1(c) (West 2016)); the \$25 Document Storage (Clerk) fee (705 ILCS 105/27.3c (West 2016)); and a \$50 Court System fee (55 ILCS 5/5-110(c) (West 2016)).

¶ 8 The State agrees with Watson that he is entitled to presentence incarceration credit against two of these assessments: the \$15 State Police Operations Fee (see *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31) and the \$50 Court System fee (see *People v. Ackerman*, 2014 IL App (3d) 120585, ¶ 30). We accept the State's concession and hold that these assessments are fines against which Watson can receive \$5-per-day credit for the time he spent in presentence custody. We order the circuit court to correct the fines, fees, and costs order to reflect this credit.

¶ 9 The State does not concede Watson's claim for credit against the remaining five assessments he has identified: the \$190 Felony Complaint fee, the \$25 Automation (Clerk) fee, the \$2 Public Defender Records Automation Fee, the \$2 State's Attorney Records Automation Fee, and the \$25 Document Storage (Clerk) fee. In countless cases, this court has considered challenges to these assessments and found them to be fees, not fines, and therefore not subject to offset by the \$5-per-day presentence custody credit. *E.g.*, *Brown*, 2018 IL App (1st) 160924, ¶¶ 31, 32; *Smith*, 2018 IL App (1st) 151402, ¶¶ 15, 16.<sup>1</sup> As for the \$2 State's Attorney Records Automation fee and the \$2 Public Defender Records Automation fee, the overwhelming majority of legal authority holds that they are fees not subject to offset. *E.g.*, *Brown*, 2018 IL App (1st) 160924, ¶ 31; *Smith*, 2018 IL App (1st) 151402, ¶ 16; *People v. Brown*, 2017 IL App (1st)

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<sup>1</sup> We note that our supreme court has allowed appeal in a case where this court determined that these assessments are fees not subject to offset. *People v. Clark*, 2017 IL App (1st) 150740-U, ¶¶ 21-23, appeal allowed, No. 122495 (Sept. 27, 2017).

150146, ¶ 38 (collecting cases); but see *People v. Camacho*, 2016 IL App (1st) 140604, ¶¶ 47-56 (finding that these two assessments are fines, not fees). In keeping with precedent, we conclude that these five assessments are fees and, therefore, may not be offset by Watson's presentence custody credit.

¶ 10 For the reasons explained above, we find that the \$10 Mental Health Court fine, the \$5 Youth Diversion / Peer Court fine, the \$5 Drug Court fine, the \$30 Children's Advocacy Center fine, the \$15 State Police Operations Fee, and the \$50 Court System fee are offset by presentence credit. The total amount of fines, fees, and costs is reduced from \$489 to \$374. We order the circuit court to correct the fines, fees, and costs order accordingly.

¶ 11 Affirmed; fines, fees, and costs order corrected.

¶ 12 JUSTICE HYMAN, dissenting, in part:

¶ 13 I agree with my colleagues' disposition of Watson's challenges to the various fines and fees imposed, with the exception of the \$2 State's Attorney and Public Defender records automation charges. As I previously explained in *People v. Camacho*, 2016 IL App (1<sup>st</sup>) 140604, the language of the relevant statutes demonstrates that these charges are assessed to fund the technology of these offices, not to compensate for the costs of prosecuting a particular defendant. *Id.* ¶ 50. So these charges are fines, not fees and Watson is entitled to presentence credit against them.