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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 9266
)	
SYLVESTER McFERREN,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the trial court's summary dismissal of defendant's *pro se* petition for postconviction relief. We lack subject matter jurisdiction to consider defendant's claims that certain fees imposed at sentencing were actually fines subject to offset by his presentence incarceration credit because those issues were substantive claims improperly raised for the first time on appeal.

¶ 2 Defendant Sylvester McFerren appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act. He argues that various fees imposed by the court on his fines, fees, and costs order are actually fines that he is entitled to offset with his presentence incarceration credit.

¶ 3 We affirm. Under the Post-Conviction Hearing Act, McFerren's fines and fees arguments may not be raised for the first time on appeal.

¶ 4 Background

¶ 5 On December 8, 2015, McFerren pled guilty to violating the armed habitual criminal statute. The court sentenced him to six years' imprisonment and awarded him 211 days of presentence incarceration credit. The court also imposed fines and fees. McFerren did not file a postplea motion or direct appeal.

¶ 6 On May 17, 2016, McFerren filed a *pro se* petition for postconviction relief, alleging the factual basis for his plea was insufficient. The trial court summarily dismissed the petition on June 17, 2016. McFerren timely appealed.

¶ 7 Analysis

¶ 8 On appeal, McFerren does not challenge the court's summary dismissal of his postconviction petition. Instead, for the first time, McFerren uses this appeal to argue that various fees imposed by the trial court are fines subject to offset by his \$5 *per diem* presentence incarceration credit. In particular, McFerren argues that the \$15 State Police operations, \$2 Public Defender Records Automation, \$2 State's Attorney Records Automation, \$15 Court Document Storage Fund, \$50 court system, \$190 Felony Complaint Filed, \$25 Court Services (Sheriff), and \$15 court automation assessments are fines mislabeled as fees on the fines, fees, and costs order and, accordingly, his *per diem* credit should apply to those charges. The State argues both that McFerren has forfeited review of these issues by failing to raise them before the trial court and that this court lacks jurisdiction to consider them. (While this appeal was pending, the supreme court decided whether several of these assessments were fines in *People v. Clark*,

2018 IL 122495, which McFerren acknowledged in a subsequently filed motion to cite additional authority.)

¶ 9 The Act sets forth a three-stage process as a means for criminal defendants to challenge their convictions based on *constitutional* violations. (Emphasis added.) *People v. Beaman*, 229 Ill. 2d 56, 71 (2008). Statutory claims, including issues relating to fines and fees, are not cognizable under the Act. *People v. Caballero*, 228 Ill. 2d 79, 87 (2008). A proceeding initiated under the Act is “not a substitute for a direct appeal, but rather is a collateral attack on a prior conviction and sentence.” *People v. Davis*, 2014 IL 115595, ¶ 13. Section 122-2 of the Act provides that “[t]he petition shall *** clearly set forth the respects in which petitioner’s constitutional rights were violated.” 725 ILCS 5/122-2 (West 2016). Claims not raised in a postconviction petition cannot be raised for the first time on appeal. *People v. Jones*, 213 Ill. 2d 498, 505-06 (2004); see also 725 ILCS 5/122-3 (West 2016) (“Any claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived.”).

¶ 10 McFerren’s fines and fees arguments on appeal are not properly before this court because they are raised for the first time on appeal and are not cognizable under the Act. See *Jones*, 213 Ill. 2d at 505-06; and *Caballero*, 228 Ill. 2d at 87. Nevertheless, McFerren contends that he may apply for his \$5 *per diem* credit at any time and at any stage of proceedings, even on appeal in a postconviction proceeding. We review *de novo* the imposition of fines and fees. *People v. Brown*, 2017 IL App (1st) 150203, ¶ 34.

¶ 11 Section 110-14 of the Code of Criminal Procedure of 1963 provides that a defendant is entitled to a credit of \$5 toward his fines for each day of incarceration on aailable offense before sentencing on “application of the defendant.” 725 ILCS 5/110-14(a) (West 2014). This

credit applies only to fines, not fees or other costs. *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). Notwithstanding the rule that statutory claims are not cognizable under the Act, claims for presentence incarceration credit under section 110-14 may be raised “at any time and at any stage of court proceedings, even on appeal in a postconviction proceeding.” *Caballero*, 228 Ill. 2d at 88; see also *People v. Grigorov*, 2017 IL App (1st) 143274, ¶ 7; and *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 25, pet. for leave to appeal allowed, No. 122549 (Nov. 22, 2017) (noting that *Caballero*, “in essence, stands for the proposition that a defendant may ‘piggyback’ a section 110-14 claim onto any properly filed appeal, even if the claim is unrelated to the grounds for that appeal.”).

¶ 12 But, *Caballero* and section 110-14 do not permit McFerren to raise substantive claims regarding whether particular assessments are characterized as fines or fees “under the guise of applying for the ministerial correction of a mathematical calculation called for under section 110-14.” *Brown*, 2017 IL App (1st) 150203, ¶ 40. Fees assessed in error are not void or independently reviewable under Illinois Supreme Court Rule 615(b) and, therefore, we do not have subject matter jurisdiction over these issues. *Id.* Accordingly, we do not address McFerren’s claims.

¶ 13 Affirmed.