

2019 IL App (1st) 162396-U

No. 1-16-2396

Order filed February 6, 2019

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. 13 CR 16472
)	
DAVID DELGADO,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge, presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* We order the fines, fees and costs order modified.

¶ 2 Following a bench trial, defendant David Delgado was convicted of robbery (720 ILCS 5/18-1(a) (West 2012)) and sentenced to six years' imprisonment. On appeal, defendant contends that various fees imposed by the trial court are actually fines that should be offset by his presentence incarceration credit. For the following reasons, we affirm and order the fines and fees order corrected.

¶ 3 Defendant does not challenge his conviction or sentence so we recite only those facts necessary to our disposition. The trial court found defendant guilty of robbery and sentenced him to six years' imprisonment. The court denied defendant's motion for a new trial. The record reflects defendant was entitled to 1,049 days of presentence incarceration credit. The court imposed \$724 in fines, fees, and costs, but awarded defendant \$80 credit toward applicable fines. The court thereafter denied defendant's motion to reconsider his sentence. Defendant did not challenge the fines and fees order. He timely appeals.

¶ 4 On appeal, defendant argues that several fees imposed by the trial court are actually fines that may be offset by his presentence incarceration credit. Defendant concedes that he did not preserve these issues, but argues that they are reviewable under Illinois Supreme Court Rule 615(b) (Ill. S. Ct. R. 615(b) (eff. Jan. 1, 1967)) and the second prong of the plain error doctrine or, alternatively, because counsel was ineffective for failing to raise them. The State acknowledges defendant failed to preserve these issues, but agrees that the order contains several errors. Accordingly, the State has forfeited any argument regarding defendant's forfeiture, and we will consider defendant's claims. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (the rules of waiver and forfeiture apply to the State). We review *de novo* whether an assessment in a criminal case is a fine or a fee. *People v. Clark*, 2018 IL 122495, ¶ 8.

¶ 5 The trial court imposed \$724 in fines, fees and costs and awarded defendant \$80 credit toward his fines, for a total of \$644. Under section 110-14 of the Code of Criminal Procedure of 1963 (the Code), defendant is entitled to a credit of \$5 toward his fines for each day he was incarcerated on a bailable offense prior to sentencing. 725 ILCS 5/110-14(a) (West 2016). The Code indicates that "the credit applies only to 'fines' that are imposed pursuant to a conviction,

not to any other court costs or fees.” *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). Whether an assessment is a fine or a fee depends on its purpose. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Fees are “intended to reimburse the state for a cost incurred in the defendant’s prosecution,” while fines are punitive in nature and “part of the punishment for a conviction.” *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 63 (citing *People v. Jones*, 223 Ill. 2d 569, 582 (2006)). Defendant was entitled to credit for 1,049 days for presentence incarceration. He therefore has \$5,245 (1,049 days multiplied by \$5) credit available toward his fines.

¶ 6 The parties agree that the \$15 State Police operations charge (705 ILCS 105/27.3a(1.5) (West 2016)) and the \$50 court system charge (55 ILCS 5/5-1101(c)(1) (West 2016)) are fines subject to offset by defendant’s presentence incarceration credit. We agree that both of these assessments are fines because they do not reimburse the State for expenses incurred in defendant’s prosecution. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (“the State Police Operations Assistance fee does not reimburse the State for costs incurred in defendant’s prosecution”); *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21 (awarding defendant credit for court system fee imposed under section 5-1101(c) of Counties Code, stating, “Most important, the assessment is not intended or geared to compensate the State (or the county) for the cost of prosecuting a defendant.”).

¶ 7 Defendant next asserts that his presentence incarceration credit should apply to the \$2 Public Defender Automation Fund charge (55 ILCS 5/3-4012 (West 2016)), the \$2 State’s Attorney Records Automation Fund charge, (55 ILCS 5/4-2002.1(c) (West 2016)), \$190 “Felony Complaint Filed, (Clerk)” charge (705 ILCS 105/27.2a(w)(1)(A) (West 2016)), the \$25 court automation charge (705 ILCS 105/27.3a(1) (West 2016)), and the \$25 Court Document Storage

Fund charge (705 ILCS 105/27.3c(a) (West 2016)). Our supreme court recently determined that these assessments are fees intended to compensate the State for costs incurred in prosecuting defendants. *Clark*, 2018 IL 122495 ¶ 51. Thus, defendant may not offset them using presentence incarceration credit. *Id.*

¶ 8 In sum, the \$15 State Police operations and \$50 court systems assessments are fines that defendant is entitled to offset with his presentence custody credit. We order the clerk of the circuit court to modify the fines, fees and costs order for a new total of \$579. The judgment of the circuit court is affirmed in all other respects.

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