

2019 IL App (1st) 170014-U

No. 1-17-0014

Order filed January 17, 2019

Fourth 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. 15 CR 11752
)	
TRISTAN GORDON,)	Honorable
)	Arthur F. Hill, Jr.,
Defendant-Appellant.)	Judge, presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice McBride and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's fines and fees order amended to vacate the \$5 electronic citation fee and apply a \$50 credit against the court system fee; claim that additional fees constitute fines entitled to monetary credit is without merit.

¶ 2 Following a jury trial, defendant Tristan Gordon was convicted of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2014)) and sentenced to five years' imprisonment. The trial court also assessed defendant fines, fees and court costs totaling \$554. On appeal, defendant does not challenge his conviction or term of imprisonment,

but contends that his fines and fees order should be amended. Defendant contends that the \$5 electronic citation fee was improperly assessed and should be vacated. He also argues that monetary credit for the days he spent in presentencing custody should be applied against several assessments. We vacate the \$5 electronic citation fee, apply a credit of \$50 against the court system fee, and affirm defendant's conviction and sentence in all other respects.

¶ 3 Because defendant does not challenge his conviction or prison term, we need not discuss the details of the evidence presented at trial or the other proceedings below. The evidence established that at 1:30 a.m. on July 12, 2015, Chicago police responded to a call of a man with a firearm. The officers observed a group of men standing on the sidewalk on Kedzie Avenue. When the officers exited their vehicle, defendant fled. Officer Robert Ontiveros chased defendant and observed him withdraw a black handgun from his waistband and toss it to the ground. Defendant dove to the ground near the firearm. Ontiveros drew his weapon and yelled at defendant not to move or touch the handgun. Ontiveros and Officer Richard Reimer handcuffed defendant. Reimer recovered a .40-caliber Beretta handgun from the ground which was loaded with 13 rounds of ammunition. Reimer also recovered from defendant's jacket pocket three bags of cannabis weighing 2.57 grams. The State presented certifications from the Illinois State Police that defendant had never been issued a firearm owner's identification card or a concealed carry license. The State also presented a stipulation that defendant was previously convicted of a qualifying felony offense. The jury found defendant guilty of UUWF and three counts of aggravated UUW (AUUW). The trial court merged the AUUW counts into the UUWF offense, sentenced defendant to five years' imprisonment, and awarded him 520 days of credit for time

served in presentence custody. The court also assessed defendant \$554 in fines, fees and court costs.

¶ 4 On appeal, defendant contends that the \$5 electronic citation fee must be vacated because it was erroneously assessed. Defendant also argues that he is entitled to apply presentence monetary credit against several assessments that are labeled as fees, but are actually fines.

¶ 5 Defendant acknowledges that he did not preserve these issues for appeal because he did not challenge the assessments in the trial court. See *People v. Harvey*, 2018 IL 122325, ¶ 15. Nevertheless, he urges this court to review his assessments under the plain error doctrine. The State acknowledges the forfeiture, agrees that plain error applies, and addresses the merits of defendant's claims. Both parties also assert that the *per diem* monetary credit is a statutorily mandated benefit that cannot be waived. See *People v. Caballero*, 228 Ill. 2d 79, 83 (2008).

¶ 6 Defendant's request for the *per diem* monetary credit is not merely requesting credit that is due against his fines, but rather, raises 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. This court has issued differing opinions as to whether defendant's claims can be reviewed as plain error. See *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9, *pet. for leave to appeal granted*, No. 122549 (Nov. 22, 2017) (challenges to fines and fees are not reviewable under the plain error doctrine); *contra People v. Cox*, 2017 IL App (1st) 151536, ¶ 102 (the improper imposition of fines and fees affects "substantial rights" and thus may be reviewed under the second prong of the plain error doctrine). 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 this court may reach the issues, thereby waiving the forfeiture. 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.

¶ 7 First, the parties agree, and we concur, that the \$5 electronic citation fee (705 ILCS 105/27.3e (West 2014)) must be vacated as that fee only applies to traffic, misdemeanor, municipal ordinance and conservation violations, and does not apply to defendant's felony offense. We vacate the \$5 electronic citation fee and direct the clerk of the circuit court to amend the fines, fees and costs order accordingly.

¶ 8 Defendant also contends that he is due monetary credit against several of his assessments. Pursuant to section 110-14 of the Code of Criminal Procedure (Code) (725 ILCS 5/110-14 (West 2014)), a defendant is entitled to have a credit applied against his fines of \$5 for each day he spent in presentence custody. Here, defendant spent 520 days in presentence custody, and is therefore entitled to a maximum credit of \$2600.

¶ 9 The credit under section 110-14 can only be applied to offset fines, not fees. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). To determine whether an assessment is a fine or a fee, we consider the nature of the assessment rather than its statutory label. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). Our supreme court has defined a "fine" as "punitive in nature" and "a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." (Internal quotation marks omitted.) *Id.* (quoting *Jones*, 223 Ill. 2d at 581). A "fee," on the other hand, is "a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *Id.* (quoting *Jones*, 223 Ill. 2d at 582).

¶ 10 Defendant contends, the State agrees, and we concur, that defendant is due full credit for the \$50 court system fee (55 ILCS 5/5-1101(c) (West 2014)). The parties agree that, although the charge is labeled as a fee, this court has previously held that it is a fine because it does not compensate the State for expenses incurred in the prosecution of defendant, and thus, it is subject to offset by the monetary sentencing credit. *People v. Wynn*, 2013 IL App (2d) 120575, ¶ 17. We direct the clerk of the circuit court to amend the fines, fees and costs order to reflect a \$50 credit for the court system fee.

¶ 11 Defendant next contends that he is entitled to credit against the \$190 felony complaint filed fee (705 ILCS 105/27.2a(w)(1)(A) (West 2014)), the \$25 automation fee (705 ILCS 105/27.3a(1) (West 2014)), and the \$25 document storage fee (705 ILCS 105/27.3c(a) (West 2014)). Defendant argues that these assessments are fines rather than fees because they do not reimburse the State for the costs incurred in prosecuting a defendant, but instead, finance a component of the court system for the general costs of litigation.

¶ 12 Our supreme court recently considered and rejected the same arguments defendant presents here. *People v. Clark*, 2018 IL 122495. In *Clark*, the court analyzed the language in the statutes that authorize the imposition of the challenged assessments. The court found that the plain language of the authorizing statute indicates that the felony complaint filed charge is a fee imposed to reimburse the court for the costs of filing a felony case. *Id.* ¶ 33. The automation charge is a fee that compensates the clerk of the circuit court for the necessary costs of creating and maintaining automated records in a record keeping system. *Id.* ¶ 40. Similarly, the document storage charge is a fee that compensates the clerk of the circuit court for the costs of creating and maintaining a document storage system. *Id.* ¶ 48. Because all cases generate documents which

must be automated, stored, and maintained by the clerk, the court found that the above fees are related to the defendant's prosecution. *Id.* ¶¶ 40, 48. Accordingly, the court held that these three assessments are fees, not fines, and therefore, not subject to presentence incarceration credit. *Id.* ¶¶ 34, 41, 49. In accordance with the holdings in *Clark*, we find that defendant is not entitled to offset these fees with his presentence custody credit.

¶ 13 Finally, defendant contends that he is entitled to credit against 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)). Defendant points out that these assessments apply to all defendants who are found guilty of an offense, and that the purpose of the assessments is to discharge the expenses associated with establishing and maintaining automated record keeping systems. He argues that the assessments therefore do not compensate the State for prosecuting a particular defendant, and thus, they constitute fines rather than fees.

¶ 14 The *Clark* court also rejected these arguments. In *Clark*, the court found that the State's Attorney's Office and the Public Defender's Office are necessarily involved in every prosecution, and both offices generate records which must be automated. *Id.* ¶¶ 22, 27. Consequently, the court held that the \$2 State's Attorney records automation fee and the \$2 Public Defender records automation fee are compensatory fees, not fines, and thus not subject to offset by the *per diem* credit. *Id.* We adhere to the holdings in *Clark*, and similarly conclude that defendant is not entitled to offset these fees with his presentence custody credit.

¶ 15 For these reasons, we vacate the \$5 electronic citation fee from the fines and fees order. We direct the clerk of the circuit court to further amend that order to reflect a credit of \$50 to offset the court system fee. We affirm defendant's conviction and sentence in all other respects.

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¶ 16 Affirmed in part; vacated in part; fines and fees order corrected.