2017 IL App (1st) 151096-U

No. 1-15-1096

Order filed August 24, 2017

Fourth Division



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. 13 C6 60816 |
| | ) | |
| AVERY CHANDLER, | ) | Honorable |
| | ) | Michele M. Pitman, |
| Defendant-Appellant. | ) | Judge, presiding. |

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *Held*: The fines, fees and costs order and the mittimus are modified.

¶ 2 Following a bench trial, defendant Avery Chandler was convicted of one count of robbery (720 ILCS 5/18-1(a) (West 2012)) and sentenced to five years in prison. On appeal, defendant challenges certain assessed fines and fees. He also contends that the mittimus should be corrected because it does not reflect the correct number of days that he spent in presentence

custody. For the reasons below, we order modification of the fines, fees, and costs order and the mittimus.

¶ 3 At trial, Anthony Ray testified that, on June 25, 2013, defendant knocked him down, wrestled with him, and took his cellular phone and $10 out of his pants pocket. Ray identified defendant to police and, at the police station, subsequently identified his phone, a photograph of which he also identified at trial. Chicago police officer Somer testified that the photograph depicted the cellular phone he recovered from defendant's pants pocket. The trial court found defendant not guilty of unlawful restraint, guilty of one count of robbery, and sentenced him to five years in prison. The trial court stated that defendant would be credited for 638 days of presentence custody credit and that he would be assessed $589 in mandatory court fees.

¶ 4 Defendant contends on appeal that the assessed fines, fees, and costs should be reduced from $589 to $275. He argues that (1) the $25 Violent Crime Victim Assistance (VCVA) fine should be vacated and (2) he is entitled to presentence custody credit for certain charges that are labeled as "fees" but are actually "fines." Defendant also contends that the mittimus does not accurately reflect the number of days he spent in presentence custody.

¶ 5 We first address defendant's contention that the mittimus does not reflect the correct number of days that he spent in presentence custody. The mittimus provides that defendant was in presentence custody for 638 days. Defendant argues that he was actually detained for 639 days, as he was arrested on June 25, 2013, and was in custody until sentencing on March 26, 2015. The State concedes that the mittimus should be corrected to reflect that defendant spent 639 days in presentence custody.

¶ 6 Section 5-4.5-100(b) of the Unified Code of Corrections provides that defendant "shall be given credit *** for the number of days spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2012). From our review, we agree with the parties that defendant spent 639 days in presentence custody. Therefore, we order correction of the mittimus to reflect that defendant spent 639 days in presentence custody. See *People v. Harper*, 387 Ill. App. 3d 240, 244 (2008).

¶ 7 Turning to defendant's challenge to the assessed fines, fees, and costs, he concedes that he did not raise his challenge in the trial court, but urges us to review the issue under the plain error doctrine. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). The State acknowledges that defendant forfeited his claims by failing to raise them in the trial court but agrees that we may review them under the plain error doctrine.

¶ 8 We disagree with the parties that defendant's challenge is reviewable under the plain error doctrine. *People v. Grigorov*, 2017 IL App (1st) 143274, ¶ 15; *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 9. Nevertheless, because the State does not argue that defendant has forfeited appellate review of his challenge to the fines and fees assessed against him, it has forfeited any forfeiture argument. See *People v. Williams*, 193 Ill. 2d 306, 347-48 (2000) (rules of waiver and forfeiture apply to the State). Therefore, even though defendant did not raise his challenge to the fines and fees in the trial court, we will review his claims. The propriety of court-ordered fines and fees is reviewed *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 9 Defendant first contends, and the State concedes, that the $25 VCVA fine should be vacated because it was improperly imposed. We agree. The fines, fees, and costs order provides

that the $25 VCVA fine was assessed pursuant to "725 ILCS 240/10(c)(1) or (2)," which provides for a charge of $25 for a crime of violence, or $20 for a felony or misdemeanor, when "no other fine is imposed" and when a defendant was convicted after August 28, 1986. 725 ILCS 240/10(c)(1), (2) (West 2010). Effective July 16, 2012, however, the statute was amended to eliminate the subsection. Pub. Act 97-816 (eff. July 16, 2012) (amending 725 ILCS 240/10 (West 2010)). Therefore, because the statute authorizing the $25 VCVA charge was not in effect when defendant committed the offense on June 25, 2013, we vacate this assessment.

¶ 10 Defendant next contends that he is entitled to a credit of $5 for each day he spent in presentence custody to be applied against certain fees assessed against him that are actually fines. Under section 110-14(a) of the Code of Criminal Procedure, defendant is entitled to a credit of $5 for each day he spent in presentence custody. 725 ILCS 5/110-14(a) (West 2012). The presentence credit applies only to "fines" imposed after a conviction and does not apply to other costs or fees. *People v. Tolliver*, 363 Ill. App. 3d 94, 96 (2006). A "fine" is considered to be part of a defendant's "punishment" after a conviction, but a "fee" is imposed to "recoup expenses incurred by the state—to 'compensat[e]' the state for some expenditure incurred in prosecuting the defendant." *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Even if the charge is labeled a "fee" in the authorizing statute, it still may be considered a "fine." *Jones*, 223 Ill. 2d at 599. Defendant spent 639 days in presentence custody and is, therefore, entitled to $3195 of presentence custody credit.

¶ 11 Defendant argues that he is entitled to presentence custody credit for the $15 State Police operations fee (705 ILCS 105/27.3a(1.5) (West 2012)), the $2 public defender records automation fee (55 ILCS 5/3-4012 (West 2012)), the $2 State's Attorney records automation fee

(55 ILCS 5/4-2002.1(c) (West 2012)), the $190 "Felony Complaint Filed (Clerk)" fee (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), the $15 automation fee (705 ILCS 105/27.3a(1), (1.5) (West 2012)), the $15 document storage fee (705 ILCS 105/27.3c(a) (West 2012)), the $25 court services (sheriff) fee (55 ILCS 5/5-1103) (West 2012)), and the $50 court system fee (55 ILCS 5/5-1101(c)(1) (West 2012)).[1] The State concedes that two of these assessments, the $15 State Police operations fee and the $50 court system fee, are actually fines subject to offset by defendant's presentence custody credit, but it maintains that the remaining charges are fees.

¶ 12 We agree with the parties that the $15 State Police operations fee and the $50 court system fee are considered "fines," as they do not compensate the State for the expenses incurred in defendant's prosecution. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 31 (concluding that the State Police operations assessment is a fine, noting that it "does not reimburse the State for costs incurred in defendant's prosecution"); *People v. Smith*, 2013 IL App (2d) 120691, ¶ 21-22 (finding that the court system fee is a fine, noting that the charge "is not explicitly tied to, and bears no inherent relationship to, the actual expenses involved in prosecuting the defendant"). Because the $15 State Police operations and the $50 court system assessments are fines, defendant is entitled to presentence custody credit toward these charges.

¶ 13 Defendant next contends that the $2 public defender records automation fee and the $2 State's Attorney records automation fee are considered fines. He asserts that these charges do not compensate the State for the costs incurred as a result of defendant's prosecution. To support his

[1] As defendant correctly points out, while the fines, fees, and costs order provides that the section in the statute authorizing the State's Attorney public records automation fee is section 4-2002.1(a), the section authorizing this charge is actually section 4-2002.1(c). 55 ILCS 5/4-2002.1(c) (West 2012).

position, defendant cites *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56, which held that these assessments are fines.

¶ 14 In *People v. Brown*, 2017 IL App (1st) 142877, ¶ 76, 78, this court recently found that the $2 public defender records automation and the $2 State's Attorney records automation assessments were fees. In reaching this conclusion, the court recognized *Camacho* but concluded that it would follow the "weight of authority" that previously found that the State's Attorney records automation fee was a fee. *Brown*, 2017 IL App (1st) 142877, ¶ 76 (citing *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 29; *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 115; *People v. Reed*, 2016 IL App (1st) 140498, ¶ 16; *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 30). Other than the name of the organization, *Brown* found the $2 public defender fee was "identical" to the State's Attorney records automation fee. *Id.* ¶ 78. While we recognize the holding in *Camacho*, we follow *Brown* and the weight of authority that has previously held that these assessments are fees. *Brown*, 2017 IL App (1st) 142877, ¶ 76, 78. Accordingly, defendant is not entitled to presentence custody credit toward the $2 public defender records automation and the $2 State's Attorney records automation assessments.

¶ 15 Defendant next argues that the $190 felony complaint filing fee, the $15 automation fee, and the $15 document storage charges are actually "fines." Defendant contends that these charges do not reimburse the State for the costs incurred as a result of defendant's prosecution. He asserts the felony complaint filing fee is, *inter alia*, an "arbitrary figure" imposed to finance the clerk's "mission as a whole." He asserts that the automation fee "finances a component of the court system," the document storage fee is imposed to defray a "general cost of the court system," and document storage is "not a prosecutorial activity."

¶ 16 The State maintains that these three charges are fees and, to support its position, cites *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006). In *Tolliver*, this court held that these charges are fees, finding that they are "compensatory and a collateral consequence of defendant's conviction." *Tolliver*, 363 Ill. App. 3d at 97. Defendant asserts that *Tolliver* is not persuasive because it was decided three years before our supreme court's decision in *Graves*, which stated, " 'A charge is a fee if and only if it is intended to reimburse the state for some cost incurred in defendant's prosecution.' " *People v. Graves*, 235 Ill. 2d 244, 250 (2009) (quoting *People v. Jones*, 223 Ill. 2d 569, 600 (2006)).

¶ 17 We disagree with defendant. *Tolliver* examined whether the three fees were "compensatory," *i.e.*, costs to prosecute the defendant, and concluded that they were a "collateral consequence" of the defendant's conviction and therefore fees. *Tolliver*, 363 Ill. App. 3d at 97. As explained recently in *Brown*, *Tolliver* is consistent with *Graves*, as it "used the same framework as was set forth in *Graves* for determining whether a charge is a fee or fine." *Brown*, 2017 IL App (1st) 142877, ¶ 81. We conclude, therefore, that the felony complaint filing, automation, and document storage charges imposed on defendant are fees and he is not entitled to presentence incarceration credit toward these assessments. *Id.* at 81; *Tolliver*, 363 Ill. App. 3d at 97.

¶ 18 Defendant next contends that the $25 court services (sheriff) charge is a fine. He asserts that sheriff's "security guards" provide a neutral service, the charge does not compensate the State for the costs incurred to prosecute defendant, and it finances a component of the "overall court system." The State maintains that this charge is a fee.

¶ 19 Section 5-1103 of the Counties Code, the statute authorizing the court services (sheriff) fee, states: "A county board may enact by ordinance or resolution a court services fee dedicated to defraying court security expenses incurred by the sheriff in providing court services or for any other court services deemed necessary by the sheriff to provide for court security." 55 ILCS 5/5-1103 (West 2012). To prosecute defendant, court security services were necessarily used, and thus, as we held in *Tolliver*, court security expenses were a "collateral consequence" of his prosecution and conviction. *Tolliver*, 363 Ill. App. 3d at 97. Thus, we conclude that defendant is not entitled to presentence custody credit toward this charge. See *People v. Heller*, 2017 IL App (4th) 140658, ¶ 74 (finding that the court services (sheriff's) assessment is a fee and not a fine).

¶ 20 For the reasons explained above, we vacate the $25 VCVA assessment. Further, defendant is entitled to $5 per day of presentence custody credit toward the $15 State Police operations and the $50 court system assessments. We also conclude that the mittimus should be corrected to reflect that defendant spent 639 days in presentence custody. We order the clerk of the circuit court to modify the fines, fees, and costs order and the mittimus accordingly. The judgment of the circuit court is affirmed in all other respects.

¶ 21 Affirmed; fines, fees, and costs order and the mittimus modified.