

2017 IL App (1st) 152624-U

No. 1-15-2624

Order filed August 28, 2017

First 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. 14 CR 17315
)	
DEREK JOHNSON,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* One monetary charge that was imposed against defendant as part of his conviction was erroneously assessed and is vacated. A portion of defendant's presentence custody credit is applied to two fines, thus reducing the total amount of fines and fees owed.

¶ 2 Following a bench trial, defendant Derek Johnson was convicted of the delivery of less than one gram of a controlled substance (cocaine) (720 ILCS 570/401(d)(i) (West 2012)). Defendant was sentenced to six years in prison and was assessed various fines and fees, which are the sole subject of this appeal. On appeal, defendant contends that the \$5 electronic citation

fee was erroneously imposed in this case. He also argues that a portion of his monetary credit for the days he spent in custody should be applied to several other assessments that he contends are fines. For the reasons set out below, we vacate the electronic citation fee and correct the fines and fees order.

¶ 3 At trial, the State presented evidence that on September 3, 2014, a police officer completing an undercover narcotics transaction bought two bags of crack cocaine from defendant. The mittimus indicates defendant was convicted of a Class 2 felony and he should receive credit for 335 days in custody prior to his sentencing.

¶ 4 On appeal, this court reviews *de novo* the propriety of the trial court's imposition of fines and fees because it raises issues of statutory interpretation. *People v. Green*, 2016 IL App (1st) 134011, ¶ 44. Although defendant did not raise a challenge to his fines and fees order in the circuit court, he contends we can reach this issue under the plain-error doctrine, and he further contends the issue of applying presentence custody credit against his fines cannot be forfeited for failure to raise it in the circuit court. However, the State does not argue the points have been forfeited. Thus, the State has waived its own forfeiture argument. See *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 28.

¶ 5 First, defendant contends, and the State agrees, that the \$5 electronic citation fee was erroneously imposed. Section 27.3e of the Clerk of Courts Act specifies that this fee applies only to a defendant who is involved in “any traffic, misdemeanor, municipal ordinance or conservation case.” 705 ILCS 105/27.3e (West 2012). Here, defendant was convicted of a Class 2 felony drug offense, and thus, the electronic citation fee was incorrectly assessed. See *People*

v. Maxey, 2016 IL App (1st) 130698, ¶ 139. Accordingly, the \$5 electronic citation fee is vacated.

¶ 6 Defendant's remaining contentions involve the application of presentence custody credit toward several other monetary assessments imposed against him. For each day of incarceration prior to sentencing, a defendant is entitled to a credit of \$5 toward the monetary assessments levied against him as part of his conviction. 725 ILCS 5/110-14(a) (West 2012). Here, defendant served 335 days in presentence custody and accumulated \$1,675 of credit toward his eligible fines and fees. Defendant was ordered to pay \$499 in fines, fees and costs after the circuit court applied a portion of his presentence custody credit. We have vacated \$5 of those fees in the prior paragraph.

¶ 7 We now consider if any remaining fines and fees may be offset by defendant's remaining amount of presentence custody credit. Before addressing the various assessments challenged by defendant, we note that under the plain language of section 110-14(a), that credit can be applied only to "fines" and not to "fees." See 725 ILCS 5/110-14(a) (West 2012); *People v. Johnson*, 2011 IL 111817, ¶ 8.

¶ 8 A "fine" has been defined as a "pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense." *Id.*, citing 19 Ill. L. and Prac. *Fines, Forfeitures and Penalties* § 2 (2009). In contrast, a "fee" has been defined as a charge that 'seeks to recoup expenses incurred by the state,' or to compensate the state for some expenditure incurred in prosecuting the defendant." *People v. Graves*, 235 Ill. 2d 244, 250 (2009) (citing *People v. Jones*, 223 Ill. 2d 569, 581 (2006) (quoting *People v. White*, 333 Ill. App. 3d 777, 781 (2002))). The legislature's labeling of a charge as a "fine" or a "fee" is not dispositive, and the "most

important factor is whether the charge seeks to compensate the state for any costs incurred as the result of prosecuting the defendant.” *Graves*, 235 Ill. 2d at 250-51 (citing *Jones*, 223 Ill. 2d at 600).

¶ 9 The State concedes that two charges challenged by defendant may be offset by his presentence custody credit because they are monetary penalties that do not compensate the State for prosecuting that particular defendant. Accordingly, the \$15 State Police operations assessment (705 ILCS 105/27.3a (1.5) (West 2012)) and the \$50 court system charge (55 ILCS 5/5-1101(c)(1) (West 2012)) are offset by \$65 of the credit that defendant accumulated for time spent in presentence custody. See *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 147 (State Police operations charge is a fine); *Graves*, 235 Ill. 2d at 253 (charges assessed under section 5-1101 of the Counties Code constitute fines).

¶ 10 However, we conclude that the remaining assessments discussed by defendant on appeal are not fines under the definition set out above and thus, those charges cannot be similarly offset. We will address those six charges in two main groups. First, defendant asserts that his presentence custody credit should be applied to both the \$2 State’s Attorney and \$2 Public Defender records automation charges. The statute enacting the State’s Attorney records automation charge indicates that amount is:

“to be paid by the defendant on a judgment of guilty or a grant of supervision for a violation of any provision of the Illinois Vehicle Code or any felony, misdemeanor, or petty offense to discharge the expenses of the State’s Attorney’s office for establishing and maintaining automated record keeping systems. *** Expenditures from this fund may

be made by the State’s Attorney for hardware, software, research, and development costs and personnel related thereto.” 55 ILCS 5/4-2002.1(c) (West 2012).

¶ 11 The statute authorizing the \$2 Public Defender records automation fee uses the same language as quoted above in regard to the Public Defender’s office. 55 ILCS 5/3-4012 (West 2012).

¶ 12 Defendant contends that those charges do not compensate those offices for any automated recordkeeping used in the prosecution of his case. However, several decisions of this court have concluded those charges are fees, as opposed to fines. See *People v. Brown*, 2017 IL App (1st) 150146, ¶ 38; *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 22; *Warren*, 2016 IL App (4th) 120721-B, ¶ 115 (fee not punitive because it is “intended to reimburse the State’s Attorneys for their expenses relating to automated record-keeping systems”); *People v. Bowen*, 2015 IL App (1st) 132046, ¶¶ 62-65 (finding “no reason to distinguish between the two statutes” given their nearly identical language and concluding that those charges are intended to reimburse those offices for expenses). But see *People v. Camacho*, 2016 IL App (1st) 140604, ¶ 56 (State’s Attorney and Public Defender records automation charges are fines because they do not compensate the State for costs associated in prosecuting a particular defendant). We agree with the analysis that when a charge lacks a punitive aspect, that charge is a fee, not a fine. Thus, the State’s Attorney and Public Defender records automation charges are fees and are not subject to offset.

¶ 13 As to the last four charges challenged to defendant, he contends his presentence custody credit should be applied to the circuit court clerk’s \$15 automation fee (705 ILCS 105/27.3a (1), (1.5) (West 2012)), and the \$15 document storage fee (705 ILCS 105/27.3c (a) (West 2012)),

arguing those assessments are fines because they do not seek to reimburse the State for costs incurred in his prosecution. Defendant makes the same argument as to the \$190 charge for the filing of a felony complaint (705 ILCS 105/27.2a(w)(1)(A) (West 2012)), asserting that charge is not meant to reimburse the clerk of the circuit court for its expenses and is an “arbitrary figure imposed with the purpose of financing the clerk’s mission as a whole.” Defendant argues the felony complaint charge is a fine because it is punitive and assesses a monetary amount that is based on the severity of his offense. Finally, he contends the \$25 court services fee (55 ILCS 5/5-1103 (West 2012)) is a fine because it funds a portion of the court system and applies to all criminal defendants who are found guilty, as opposed to compensating the State for a cost incurred in his prosecution.

¶ 14 In *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006), this court held that those four assessments are fees because they are compensatory and represent a “collateral consequence” of a conviction. See also *Brown*, 2017 IL App (1st) 150146, ¶ 39 (citing *Tolliver*). The automation and document storage fees assist in the funding of the maintenance of those systems (*People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 29-30), and the statute authorizing the court services fee (55 ILCS 5/5-1103 (West 2012)), expressly states that it is intended to defray the cost of court expenses and providing court security. See *People v. Pohl*, 2012 IL App (2d) 100629, ¶¶ 11-12. Likewise, the felony complaint filing charge is a fee because it is compensatory, not punitive, in nature. *People v. Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42.

¶ 15 Defendant acknowledges *Tolliver* but points out that since that case was decided, our supreme court clarified in *Graves* that to be correctly designated as a fee, the charge must reimburse the State for a cost that was incurred in his prosecution. See *Graves*, 235 Ill. 2d at 250.

However, the four penalties set out in the prior paragraph represent a portion of the overall costs incurred to prosecute defendant.

¶ 16 Defendant also relies on *People v. Smith*, 2013 IL App (2d) 120691, in asserting that the felony complaint charge is punitive and thus, constitutes a fine that should be offset. That case does not involve the assessment of the felony complaint charge.

¶ 17 Defendant focuses on the *Smith* court's discussion of the \$50 court system charge (55 ILCS 5/5-1101(c)(1) (West 2012)), which was deemed in *Graves* to be a fine. *Smith*, 2013 IL App (2d) 120691, ¶ 21. In discussing the court system charge, the court in *Smith* noted that it met the description of a fine because, as with the felony complaint charge, the amount of the charge is based on the classification of the defendant's crime (felony, misdemeanor, etc.) and the amount was "not explicitly tied to, and bears no inherent relationship to, the actual expenses involved in prosecuting the defendant." *Id.*

¶ 18 We do not find *Smith* warrants the same finding as to the felony complaint charge. The *Smith* court was bound by the supreme court's holding that the court system charge at issue was a fine. *Id.* ¶ 20 (citing *Graves*, 235 Ill. 2d at 251). *Graves* did not address the felony complaint charge. Indeed, this court has found, both before and since *Graves* was decided, that the felony complaint charge is a fee, not a fine, and is thus not subject to offset by presentence custody credit. See *Bingham*, 2017 IL App (1st) 143150, ¶¶ 41-42; *Brown*, 2017 IL App (1st) 150146, ¶ 39; *Tolliver*, 363 Ill. App. 3d at 97. The fact that the felony complaint charge is not tailored to each case does negate that it does, at least in part, compensate the State for the costs incurred in a prosecution. See *Graves*, 235 Ill. 2d at 250 (a charge is a fee if it recovers the State's costs, *in whole or in any part*, for prosecuting the defendant (emphasis added)).

¶ 19 Finally, defendant contends the \$25 court services fee (55 ILCS 5/5-1103 (West 2012)) should not have been imposed in his case because the offense of which he was convicted, *i.e.*, delivery of a controlled substance pursuant to section 401(d)(1) of the Illinois Controlled Substances Act (720 ILCS 570/401(d)(i) (West 2012)), was not one of the offenses enumerated in the statute.

¶ 20 Section 5-1103 of the Counties Code states, in pertinent part, that the court services fee at issue may be imposed in certain cases to provide for court security:

“In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction, or order of supervision, or sentence of probation without entry of judgment pursuant to Section 10 of the Cannabis Control Act, *Section 410 of the Illinois Controlled Substances Act*, Section 70 of the Methamphetamine Control and Community Protection Act, Section 12-4.3 or subdivision (b)(1) of Section 12-3.05 of the Criminal Code of 1961 or the Criminal Code of 2012, Section 10-102 of the Illinois Alcoholism and Other Drug Dependency Act, Section 40-10 of the Alcoholism and Other Drug Dependency Act, or Section 10 of the Steroid Control Act.” (Emphasis added.) 55 ILCS 5/5-1103 (West 2012).

¶ 21 Noting the italicized phrase, defendant asserts that because the statute mentions section 410 of the Controlled Substances Act among the applicable statutes, it necessarily excludes from the statute’s reach any provision not listed, such as section 401 of that Act, under which he was convicted. Thus, defendant argues that the court services fee cannot be applied in his case.

¶ 22 Several decisions of this court have rejected that contention, including *People v. Adair*, 406 Ill. App. 3d 133, 144 (2010). This court noted in *Adair* that the statute’s language indicated the legislature’s “clear intent” to require a defendant to pay the fee to defray court expenses in the types of cases listed, which include cases where “dispositions short of a judgment are entered, including supervision and probation without entry of a judgment.” *Id.* The *Adair* court held: “Based on the encompassing language of the statute and its clear purpose of defraying court security expenses, we are not persuaded that the [statute’s] failure to list the offenses the defendant committed means he cannot be required to defray the expenses incurred by the sheriff for his court proceeding.” *Id.*

¶ 23 Although defendant asserts that *Adair* was “decided incorrectly” and is not persuasive, this court has consistently read section 5-1103 to allow the court services fee to be assessed against defendants convicted of offenses that are not listed therein. See *Bowen*, 2015 IL App (1st) 132046, ¶¶ 61; *People v. Anthony*, 2011 IL App (1st) 091528-B, ¶¶ 26-27; *People v. Lattimore*, 2011 IL App (1st) 093238, ¶¶ 102-05 (finding the list of statutes following the phrase “sentence of probation” modified only that phrase and that the enumerated statutes do not extend to all adjudications listed). We follow *Adair*, *Anthony* and *Lattimore* in concluding the \$25 court services fee was correctly assessed in this case, and defendant has cited no authority to the contrary.

¶ 24 Moreover, because the court services assessment is a fee and not a fine, defendant is not entitled to have that charge offset by his presentence custody credit. In summary as to the last four charges challenged by defendant, he cannot use his credit toward the \$15 automation and document storage fees, the \$190 felony complaint fee or the \$25 court services fee.

¶ 25 In conclusion, the \$5 electronic citation fee imposed against defendant is vacated. Accordingly, defendant owes a total of \$494 in assessments, as opposed to the \$499 imposed by the circuit court. Furthermore, defendant is entitled to have two fines, the \$15 State Police operations assessment and the \$50 court system charge, offset by a portion of his presentence custody credit. Applying that offset, the \$494 amount owed by defendant is reduced to \$429. We order the circuit court to correct the fines and fees order to reflect a total amount due of \$429.

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