

No. 1-09-1395

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 JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 07 CR 22501 |
| |) | |
| HENRI JORDAN, |) | Honorable |
| |) | Kenneth J. Wadas, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE CONNORS delivered the judgment of the court.
Justices Karnezis and Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's three year term of mandatory supervised release was proper where he was convicted of a Class 2 felony but sentenced as a mandatory Class X offender. Defendant's \$200 DNA analysis fee must be vacated as he was assessed the fee in an earlier case, and his \$5 court system fee must be vacated as it applies only to vehicular offenses.

¶ 2 Following a 2009 bench trial, defendant Henri Jordan was convicted of robbery and sentenced as a mandatory Class X offender to six years' imprisonment with \$560 in fines and fees. On appeal, defendant contends that his term of mandatory supervised release (MSR) should be the two years for his Class 2 felony offense rather than the three years for a Class X

felony. He also challenges two of the fines and fees assessed against him. For the reasons stated below, we vacate the contested fees and otherwise affirm the judgment of the circuit court.

¶ 3 Defendant first contends that he should receive the two year MSR term for his Class 2 felony offense rather than the three year term for a Class X felony. His sentence includes a three year MSR term, as indicated by the records of the Department of Corrections. *People v. McKinney*, 399 Ill. App. 3d 77, 79 (2010) (we may take judicial notice of Department records).

¶ 4 Robbery is a Class 2 felony. 720 ILCS 5/18-1(b) (West 2008). The Class X offender statute provides that a defendant over 21 years old convicted of a Class 1 or Class 2 felony, after two separate and sequential convictions for felonies of Class 2 or greater "shall be sentenced as a Class X offender." 730 ILCS 5/5-5-3(c)(8) (West 2008). The MSR statute provides that "every sentence shall include as though written therein a term in addition to the term of imprisonment," with the MSR term "for first degree murder or a Class X felony [being] 3 years; [and] for a Class 1 felony or a Class 2 felony [being] 2 years." 730 ILCS 5/5-8-1(d)(1), (2) (West 2008).

¶ 5 This court has repeatedly held that a defendant sentenced as a mandatory Class X offender receives the Class X MSR term of three years. *People v. Allen*, 409 Ill. App. 3d 1058, 1078 (2011); *People v. Rutledge*, 409 Ill. App. 3d 22, 26 (2011); *People v. Lampley*, 405 Ill. App. 3d 1, 13-14 (2010); *People v. Holman*, 402 Ill. App. 3d 645, 652-53 (2010); *People v. McKinney*, 399 Ill. App. 3d 77 (2010); *People v. Lee*, 397 Ill. App. 3d 1067, 1072-73 (2010); *People v. Watkins*, 387 Ill. App. 3d 764, 766-67 (2009); *People v. Smart*, 311 Ill. App. 3d 415 (2000); *People v. Anderson*, 272 Ill. App. 3d 537, 541-42 (1995). Defendant argues that these cases are cast into doubt by our supreme court's decision in *People v. Pullen*, 192 Ill. 2d 36 (2000), where a defendant convicted of multiple burglaries and sentenced as a Class X offender to consecutive prison terms totaling 30 years challenged his consecutive sentencing on the basis that the aggregate sentence exceeded the statutory maximum. The *Pullen* court found that the

consecutive sentences exceeded the maximum for burglary on the basis that the Class X offender statute does not change the class of the felonies themselves, and defendant contends that this principle should apply to MSR as well. However, in *Rutledge, Lampley, Holman, McKinney*, and *Lee*, we expressly rejected the contention that *Pullen* applies to MSR. Adhering to these well-reasoned decisions, we find that defendant's three-year MSR term is not erroneous.

¶ 6 Defendant contends that two of his fines and fees were erroneously assessed against him. Firstly, the parties correctly agree that the \$5 court system fee under section 5-1101(a) of the Counties Code (55 ILCS 5/5-1101(a) (West 2008)) must be vacated because it applies only to vehicular offenses while robbery is not such an offense. We so order.

¶ 7 Defendant also contests the \$200 DNA analysis fee, arguing that he cannot be assessed the fee in the instant case because he provided a DNA sample and was assessed the fee upon a prior conviction. Our supreme court has recently determined¹ that the DNA analysis fee may not be assessed under such circumstances. *People v. Marshall*, 242 Ill. 2d 285 (2011). Because we are vacating the DNA analysis fee, we need not address defendant's alternative contention that the DNA analysis fee is a fine subject to pre-sentencing detention credit.

¶ 8 Accordingly, pursuant to Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), the \$200 DNA analysis fee and \$5 court system fee are vacated. The judgment of the circuit court is affirmed in all other respects.

¶ 9 Affirmed in part and vacated in part.

¹We initially found that the assessment of the DNA analysis fee was proper. However, in denying defendant leave to appeal, the supreme court has ordered us to vacate our order of November 16, 2010, and reconsider in light of *Marshall*. *People v. Jordan*, No. 111501 (September 28, 2011).