2011 IL App (1st) 093105-U

THIRD DIVISION
November 30, 2011

No. 1-09-3105

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. 09 CR 12610
	)	
JACOBY JACKSON,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

O R D E R

Held: The trial court properly assessed medical costs fee to defendant; the DNA and court systems fees found inapplicable and vacated; mittimus corrected to reflect offense of which defendant was convicted.

¶ 1 Following a bench trial, defendant Jacoby Jackson was found guilty of possession of a controlled substance and sentenced to six years' imprisonment. He was also assessed fines and fees totaling $1,190. On appeal, defendant solely contests certain of the pecuniary penalties imposed by the court, and requests the correction of his mittimus to reflect the proper offense of which he was convicted.

¶ 2 We initially affirmed defendant's conviction on March 31, 2011, and found the assessment of a $200 DNA fee proper notwithstanding that the Illinois State Police already had his DNA profile from a prior felony conviction. *People v. Jackson*, No. 1-09-3105 (2011) (unpublished order under Supreme Court Rule 23). Thereafter, the supreme court entered a supervisory order directing this court to vacate that order and reconsider the matter in light of *People v. Marshall*, 242 Ill. 2d 285 (2011). *People v. Jackson*, No. 112303 (Ill. Sept. 28, 2011). We have vacated that order and now reconsider the assessment issue.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver (720 ILCS 570/401(c)(1) (West 2008)), and found guilty of the lesser-included offense of possession of a controlled substance. 720 ILCS 570/402(c) (West 2008). That conviction was based on evidence showing that on the evening of June 5, 2009, Chicago police officers observed defendant attempt to conceal nine taped, mini ziploc bags of suspect heroin between the cushions of an abandoned, detached car seat in a vacant lot at 2848 West Flournoy Street in Chicago. The parties stipulated that the subsequent scientific analysis of this material revealed that seven of the nine bags weighed 1.9 grams and the contents tested positive for heroin.

¶ 4 On appeal, defendant contends that the trial court improperly assessed certain fines and fees which do not relate to him or his conviction. The State responds that defendant has forfeited his sentencing claims because he did not raise them in a post-trial motion, as required. *People v. Reed*, 177 Ill. 2d 389, 393 (1997). Defendant replies that where, as here, the State is seeking to enforce a void order, it may be challenged at any time. *People v. Black*, 394 Ill. App. 3d 935, 939 (2009), citing *People v. Arna*, 168 Ill. 2d 107, 113 (1995). The propriety of court-ordered fines and fees raises a question of statutory interpretation, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 5 Defendant contends that the trial court erred in assessing him a $200 DNA analysis fee because the Illinois State Police already had his DNA profile from a prior felony conviction. We agree, and take judicial notice of the Illinois State Police document defendant attached to the appendix of his brief which shows that his DNA profile has previously been obtained. *People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010). Pursuant to the supreme court's ruling in *Marshall*, 242 Ill. 2d at 303, the trial court was not authorized to assess defendant the $200 DNA fee since he is currently registered in the DNA database. We therefore vacate that fee.

¶ 6 Defendant also contends that he was improperly assessed a $10 medical costs fee, arguing that the plain language of the statute only authorizes assessment of the fee if he received medical treatment while under arrest, which he did not. The supreme court has recently settled the split of authority that developed on this issue, and held that section 17 of the County Jail Act (730 ILCS 125/17 (West 2008)) authorizes the $10 medical cost assessment regardless of whether defendant receives medical treatment. *People v. Jackson*, 2011 IL110615, ¶ 27. In light of that decision, we find that the trial court’s assessment of the fee was proper.

¶ 7 Defendant next contests the assessment of the $5 court system fee, and the State concedes that the assessment was improper in this case. We agree that the court system fee does not apply because defendant was convicted of possession of a controlled substance, a violation of the Criminal Code of 1961, and not a violation of the Illinois Vehicle Code or of a similar municipal ordinance (55 ILCS 5/5-1101(a) (West 2008)), to which the fee is directed. We therefore vacate the $5 court system fee.

¶ 8 Defendant further requests that his mittimus be corrected to reflect his conviction of the lesser included offense of possession of a controlled substance. 720 ILCS 570/402(c) (West 2008). The State agrees, and, pursuant to our authority under Supreme Court Rule 615(b) (Ill. S.

Ct. R. 615(b)(1) (eff. Aug. 27, 1999)), we direct the clerk to modify the mittimus to reflect defendant's conviction of possession of a controlled substance (720 ILCS 570/402(c)).

¶ 9 We therefore vacate the $200 DNA fee and $5 court system fee, and affirm the judgment in all other respects.

¶ 10 Affirmed in part; vacated in part; mittimus corrected.