

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).

FIRST DIVISION
FILED: November 28, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09 C2 20359
)	
JACK RECKLEY,)	Honorable
)	Larry G. Axelrod,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

Held: The \$200 DNA fee imposed against the defendant is vacated.

¶ 1 Following a jury trial, the defendant, Jack Reckley, was found guilty of driving while his license was revoked and sentenced to three years' imprisonment. The trial court also imposed a \$200 fee for DNA analysis. On appeal, the defendant challenges the imposition of the DNA-analysis fee, arguing that section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)), which authorizes such fee, contemplates the collection of a single DNA sample and the imposition of a single testing fee. He further contends that, because he already submitted DNA for testing as a result of a prior conviction, the fee imposed in this case is improper.

1-09-3519

¶ 2 On May 16, 2011, this court entered an order pursuant to Supreme Court Rule 23 (eff. Jan. 1, 2011) in which we affirmed the imposition of the \$200 DNA fee. Thereafter, the defendant filed a petition for rehearing pursuant to Supreme Court Rule 367 (eff. Dec. 29, 2009). We granted the petition, withdrew our prior decision, and ordered additional briefing.

¶ 3 As pointed out by the defendant, resolution of this appeal is governed by the supreme court's decision in *People v. Marshall*, 242 Ill. 2d 285, 950 N.E.2d 668 (2011). In that case, the supreme court held that section 5-4-3 "authorizes a trial court to order the taking, analysis and indexing of a qualifying offender's DNA, and the payment of the analysis fee only where that defendant is not currently registered in the DNA database." *Marshall*, 242 Ill.2d at 303. The State agrees that the \$200 assessment for DNA analysis should not have been assessed against the defendant. Because the defendant has already submitted DNA and paid the required fee following a previous conviction, the trial court's order imposing the \$200 DNA-analysis fee was void. See *Marshall*, 242 Ill.2d at 303.

¶ 4 For the reasons set forth above, we vacate that portion of the circuit court's sentencing order imposing a \$200 DNA-analysis fee under section 5/5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)).

¶ 5 Vacated in part.