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No. 1-09-1263

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CR 12759
	)	
LAWRENCE HOWARD,	)	Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE QUINN delivered the judgment of the court.  
Justices Neville and Murphy concurred in the judgment.

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**O R D E R**

*HELD:* Where \$5 Court System fee was incorrectly imposed against defendant, fee was vacated, but \$200 DNA analysis fee and \$25 Court Services fee were properly assessed; mittimus was corrected to reflect in-custody credit not counting day of sentencing, where mittimus was issued that day.

Following a bench trial, defendant Lawrence Howard was convicted of possession of a controlled substance and was sentenced to two years in prison and was assessed various fines

and fees. On appeal, defendant challenges the imposition of three fees and seeks additional days of presentencing custody credit with the attendant \$5-per-day credit against certain fees. For the reasons that follow, we vacate the imposition of one fee and award additional presentencing custody credit.

Because defendant's arguments on appeal do not implicate his conviction, we set out only the facts that relate to the challenged fees and fines and to his sentencing credit. First, the trial court imposed a \$200 DNA analysis fee pursuant to section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)), which requires any person convicted of a felony to submit DNA samples to the state police and pay the \$200 analysis fee. 730 ILCS 5/5-4-3(a), (j) (West 2008).

Defendant contends he should not be charged the DNA fee in this case because he submitted a DNA sample and paid the fee following a previous conviction. This court has considered and rejected this argument in several cases holding that a new DNA sample should be taken, and the fee should be assessed, upon each felony conviction. See *People v. Williams*, No. 1-09-1667, slip op. at 12 (Ill. App. Dec. 2, 2010); *People v. Hubbard*, 404 Ill. App. 3d 100, 103 (2010); *People v. Grayer*, 403 Ill. App. 3d 797, 801-02 (2010); *People v. Marshall*, 402 Ill. App. 3d 1080, 1083 (2010), appeal allowed, No. 110765 (Sept. 29, 2010); contra *People v. Rigsby*, No. 1-09-1461, slip op. at 6 (Ill. App. Dec. 3,

2010). We adhere to the reasoning in *Williams, Hubbard, Grayer* and the additional decisions upholding the collection of a DNA sample and the imposition of the DNA analysis fee for each felony conviction. Therefore, the \$200 DNA analysis fee was properly assessed against defendant.

Defendant next challenges the assessment of a \$25 Court Services fee, arguing he was not convicted of an offense listed in the statute that authorizes the fee. Section 5-1103 of the Counties Code (55 ILCS 5/5-1103 (West 2008)) provides, in relevant part:

"In criminal, local ordinance, county ordinance, traffic and conservation cases, [the court services 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 [certain enumerated statutes]."

Defendant asserts that for the fee to be imposed, his conviction must be for an offense listed in section 5-1103. However, that interpretation disregards the broad language of the statute allowing the fee upon any "judgment of conviction." See

1-09-1263

*People v. Adair*, No. 1-09-2840, slip op. at 21-22 (Ill. App. Dec. 10, 2010); *Williams*, No. 1-09-1667, slip op. at 10-11. The imposition of the \$25 Court Services fee is affirmed.

Defendant next argues, and the State correctly concedes, that the \$5 Court System fee imposed under section 5-1101(a) of the Counties Code (55 ILCS 5/5-1101(a) (West 2008)) should be vacated because that fee is assessed only for a violation of the Illinois Vehicle Code or a similar provision. We therefore vacate the \$5 Court System fee.

Turning to defendant's arguments pertaining to presentencing credit, the record establishes that the circuit court awarded a \$5-per-day credit, totaling \$180, against his fines for 36 days in custody. Defendant contends, however, that he should receive credit for an additional 60 days spent in pre-sentencing custody, for a total of 96 days.

The State responds that defendant should receive credit for a total of 95 days in custody but not for the day he was sentenced. The issue of whether the day of sentencing is included in the calculation of in-custody credit was recently decided by the Illinois Supreme Court in *People v. Williams*, No. 109361 (Ill. Jan. 21, 2011). The supreme court held that a defendant's sentence begins upon the issuance of the mittimus, and because the day the mittimus is issued is a day of the defendant's

sentence, that day should not be counted as a day of pre-sentence custody. *Williams*, No. 109361, slip op. at 5.

The record in this case establishes that defendant was sentenced on April 2, 2009, and the mittimus was issued that day. Therefore, defendant should not receive in-custody credit for that day, and defendant's mittimus should be corrected to reflect an additional 59 days in custody before sentencing, not 60 days as defendant contends, for a total of 95 days, thus entitling defendant to \$475 in presentencing credit.

Defendant also argues that presentencing credit should be applied against the \$200 DNA analysis fee. This court has held the DNA fee is not a fine to which in-custody credit can be applied. See *Adair*, No. 1-09-2840, slip op. at 22-23; *Williams*, No. 1-09-1667, slip op. at 11; *People v. Tolliver*, 363 Ill. App. 3d 94, 97 (2006) (DNA analysis charge is a fee because it is compensatory and "a collateral consequence of defendant's conviction"). *Contra People v. Long*, 398 Ill. App. 3d 1028, 1034 (2010) (DNA analysis charge is a fine because it is unrelated to defendant's prosecution); see also *People v. Clark*, 404 Ill. App. 3d 141, 143 (2010); *People v. Mingo*, 403 Ill. App. 3d 968, 973 (2010) (following *Long*). In determining whether a charge is a fee, our supreme court has focused upon whether the charge recoups an expense incurred by the State in prosecuting a defendant. *People v. Graves*, 235 Ill. 2d 244, 250 (2009). The DNA

1-09-1263

analysis fee reimburses the State for the expense of processing and analyzing a defendant's DNA profile, and thus, the DNA analysis fee cannot be subject to credit for time in custody prior to sentencing.

In summary, we vacate the \$5 Court System fee. We direct the clerk of the circuit court to correct the mittimus to indicate 95 days spent in custody before sentencing and \$475 in presentencing credit, to reflect a total amount of fines and fees owed of \$660. The judgment of the trial court is affirmed in all other respects.

Affirmed in part as modified; vacated in part.