

No. 1-10-1122

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 11586
)	
JASON WILDER,)	Honorable
)	John T. Doody, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concur with the judgment of the court.

S U M M A R Y O R D E R

Following a bench trial, defendant, Jason Wilder, was found guilty of possession of a controlled substance with intent to deliver, then sentenced to 6 and one-half years' imprisonment. On appeal, defendant challenges only certain monetary assessments arising from his conviction.

Defendant first contends the \$200 DNA analysis fee is unauthorized under section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)) because he already submitted a DNA sample. Defendant points to a state police record, which shows a buccal swab was taken from him in 2005 following his prior drug conviction. Defendant argues the fee now imposed is duplicative.

The State initially contends defendant forfeited this claim. We disagree, as a challenge to

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an allegedly void order may be raised at any time. See *People v. Marshall*, No. 110765, slip op. at 14 (May 19, 2011).

This case is controlled by the supreme court's recent decision in *Marshall*. There, 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*, No. 110765, slip op. at 15. Here, the above-stated record, of which we may take judicial notice, reflects defendant is registered in the DNA database as a result of his prior conviction. See *People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010). With that prior conviction, we presume the circuit court imposed the fee as part of defendant's sentence. See *People v. Leach*, No. 1-09-0339, slip op. at 14 (May 31, 2011). We, therefore, agree with defendant that the \$200 DNA analysis fee is duplicative and unauthorized, and must be vacated. See *Marshall*, No. 110765, slip op. at 15.

Defendant next challenges the imposition of the \$20 fine under the Violent Crime Victims Assistance Act (Act) (725 ILCS 240/10(c)(2) (West 2008)). Section 10(c)(2) of the Act generally requires imposition of the \$20 fine when no other fine is imposed. Defendant notes that other fines were imposed in his case, and argues that the \$20 fine, therefore, must be vacated.

The State agrees the \$20 fine must be vacated, but argues that, because defendant's other fines exclude him from the flat fee fine of \$20 under section 10(c), defendant is subject to the proportional scheme for calculating the Violent Crimes Victims Assistance Fund fine under section 10(b) of the Act, and we must impose a \$308 fine against him. See 725 ILCS 240/10(b)

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(West 2008).

Defendant responds that the State has forfeited its argument regarding the enhanced fee by failing to raise it before the trial court. We disagree. Again, a challenge to an allegedly void order may be raised at any time. See *Marshall*, No. 110765, slip op. at 14; *People v. Schneider*, 403 Ill. App. 3d 301, 305 (2010).

Section 10(b) of the Act provides: "there *shall* be an additional penalty collected from each defendant upon conviction of any felony *** of \$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2008). "Shall" generally indicates a mandatory rather than permissive obligation. *People v. Williams*, 239 Ill. 2d 503, 508 (2011). The trial court, therefore, was required to impose the fine under section 10(b) of the Act, not section 10(c). See *People v. Evangelista*, 393 Ill. App. 3d 395, 401 (2009).

It is well-settled that this court may reimpose mandatory fines. *Evangelista*, 393 Ill. App. 3d at 401-02; see also Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994) (reviewing court may make any order that should have been given or made). Given the fines at issue here (the \$5 Youth/Diversion Peer Court fine; the \$10 Mental Health Court fine; the \$30 Children's Advocacy Fund fine; and the \$3,000 Controlled Substances Assessment fine) which total \$3,045, the State calculates defendant is subject to a \$308 fine under section 10(b). We agree. Contrary to defendant's contention, presentencing custody credit may not be applied against the section 10(b) fine. See 725 ILCS 5/110-14(a) (West 2008); 725 ILCS 240/10(b) (West 2008). We therefore vacate the \$20 fine and reimpose the fine in the amount of \$308.

Based on the foregoing, we order the clerk of the circuit court to correct the mittimus to

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reflect the vacation of the \$200 DNA analysis fee and the \$20 fine under the Act, and the reimposition of the \$308 fine pursuant to section 10(b) of the Act. This results in fines and fees totaling \$2,463.

We affirm the judgment of the circuit court of Cook County in all other respects pursuant to Supreme Court Rule 23(c)(2) (eff. Jan. 1, 2011).

Affirmed in part; modified in part.