

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).

FOURTH DIVISION
March 31, 2011

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.
Justices Lavin and Pucinski concurred in the judgment.

O R D E R

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

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.

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.

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). Although defendant failed to properly preserve this issue for review, he maintains that the State is seeking to enforce a void order which 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).

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. The State responds that the record does not include any evidence showing that defendant was previously assessed a DNA analysis fee or that he actually paid it.

The document defendant attached to the appendix of his brief shows that defendant's DNA was previously collected and that a profile was created. We may take judicial notice of this document, even though defendant has not supplemented the record to include it, and accept it for what it appears to be. *People v. Grayer*, 403 Ill. App. 3d 797, 799 (2010). That document does not establish that defendant paid the fee attendant to such an order; however, that is not a dispositive factor because the issue on appeal is whether the DNA analysis fee may be assessed more than once.

The Unified Code of Corrections provides, in pertinent part, that any person convicted of a felony is required to submit a DNA sample to the Illinois Department of State Police and pay an

analysis fee of \$200. 730 ILCS 5/5-4-3(a), (j) (West 2008). Defendant argues that the plain language of the statute and logic indicate that the \$200 fee may only be imposed once, citing *People v. Willis*, 402 Ill. App. 3d 47 (2010) and *People v. Evangelista*, 393 Ill. App. 3d 395 (2009). In *Willis*, 402 Ill. App. 3d at 61, the court held that where defendant has submitted a DNA sample as a result of a prior conviction, the collection of additional samples would serve no purpose. In *Evangelista*, 393 Ill. App. 3d at 399, the State conceded that the DNA fee should be vacated where defendant had submitted a DNA sample for a prior conviction, and the court agreed, noting that additional samples would serve no purpose.

This court has since declined to follow *Willis* and *Evangelista*, and, after considering the statutory language, agreed with the court in *People v. Marshall*, 402 Ill. App. 3d 1080, 1083 (2010), that nothing in the statutory language limits the taking of DNA samples or the assessment of the analysis fee to a single instance. *People v. Williams*, No. 1-09-1667, slip op. at 12 (Ill. App. Dec. 2, 2010); *People v. Hubbard*, No. 1-09-0346, slip op. at 5 (Ill. App. Sept. 17, 2010); *Grayer*, 403 Ill. App. 3d at 802. In reaching this conclusion, we controverted the logic of *Willis* and *Evangelista* by identifying at least two reasons for collecting additional DNA samples, *i.e.*, to have new samples, and an ability to subject them to the latest, most

sophisticated DNA tests. *Hubbard*, No. 1-09-0346, slip op. at 5; *Grayer*, 403 Ill. App. 3d at 801. We also noted the concern that, under certain conditions, the statute provides for the removal of a defendant's DNA from the database, which would necessitate the taking of a second sample upon conviction of another felony. *Williams*, No. 1-09-1667, slip op. at 12. We find no basis for deviating from our holdings in *Williams*, *Hubbard* and *Grayer* and, likewise, conclude that the trial court properly assessed a \$200 DNA analysis fee on defendant following his felony conviction.

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. He also notes the split of authority on this issue among the divisions of this appellate court. *People v. Coleman*, No. 1-09-0067, slip op. at 6 (Ill. App. Sept. 24, 2010); *contra People v. Cleveland*, 393 Ill. App. 3d 700, 714 (2009).

The County Jail Act provides that the county is entitled to a \$10 fee for each conviction for a criminal violation, which is deposited into a fund and must be used to reimburse the county for medical expenses or administration of the fund. 730 ILCS 125/17 (West 2008). In *People v. Jones*, 397 Ill. App. 3d 651, 663 (2009), the sixth division of this court held that the medical services fee may be imposed regardless of whether

defendant incurs medical costs, noting that the statute places no conditions on the county's right to the fee and authorizes allocation of the fund not just for reimbursement of medical expenses, but for administration of the fund as well.

Defendant takes issue with *Jones*, arguing that the change of the fund name in the statute from "Arrestee's Medical Costs Fund" to "County Jail Medical Costs Fund" provides a basis for deviating from the court's holding. We find, to the contrary, that the change of the fund name, alone, neither affects the actual operation of the statute, nor casts doubt on the underlying reasoning set out in *Jones* for permitting the uniform assessment of the fee. 397 Ill. App. 3d at 663. We therefore find that the trial court's assessment of the fee was proper in this case.

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.

1-09-3105

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)). *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

We therefore vacate the \$5 court system fee and affirm the judgment in all other respects.

Affirmed in part; vacated in part; mittimus corrected.