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FIRST DIVISION
DATE: MAY 16, 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 C2 20359
)	
JACK RECKLEY,)	Honorable
)	Larry G. Axelrod,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justice Lampkin concurred in the judgment.
Presiding Justice Hall dissented.

O R D E R

Held: Defendant challenged the imposition of the \$200 DNA analysis fee as duplicative. He argued in the alternative that it was really a fine that should be applied against his presentencing custody credit. This court rejected defendant's claims and affirmed the imposition of the \$200 DNA fee.

Following a jury trial, defendant Jack Reckley was found guilty of driving while his license was revoked and sentenced to three years' imprisonment. Defendant challenges the imposition the \$200 DNA analysis fee. He argues that the relevant statute, subsection 5-4-3(j) of the Unified Code of Corrections (730 ILCS

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5/5-4-3(j) (West 2008)), contemplates the collection of but one DNA sample and but one fee; because he already submitted DNA on a prior conviction, he argues the fee is inapplicable.

The State responds, initially, that defendant forfeited review of this issue by failing to raise it before the trial court. Defendant counters that the ordered fee is void because the trial court lacked the statutory authority to levy it, and a void order may be challenged at any time.

We agree with the State. This court has repeatedly held that imposition of the fee is authorized in a case such as the present. See *People v. Adair*, 406 Ill. App. 3d 133, 144 (2010); *People v. Williams*, 405 Ill. App. 3d 958, 966 (2010); *People v. Bomar*, 405 Ill. App. 3d 139, 150 (2010); *People v. Hubbard*, 404 Ill. App. 3d 100, 103 (2010); *People v. Grayer*, 403 Ill. App. 3d 797, 802 (2010); *People v. Marshall*, 402 Ill. App. 3d 1080, 1083 (2010), appeal allowed, No. 110765 (Sept. 29, 2010); but see *People v. Rigsby*, 405 Ill. App. 3d 916, 919 (2010), and cases cited therein (holding that only one DNA analysis and one fee is necessary per qualifying offender). These decisions reasoned that while section 5-4-3 does not expressly require a fee for every felony conviction, it also does not preclude multiple DNA fees following a conviction in separate cases. This court found that taking a defendant's DNA upon conviction of a qualifying offense provided fresh samples, subject to new methods of collecting, analyzing, and categorizing DNA and, further, that

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the fees may be used to cover a variety of additional costs incurred by the State crime lab. Unless and until our supreme court rules otherwise, we will continue to abide by these well-reasoned decisions. The order therefore is not void, and defendant has forfeited reb view of his claim. See Bomar, 405 Ill. App. 3d at 150; Marshall, 402 Ill. App. 3d at 1082.

Defendant argues, in the alternative, that the DNA analysis fee is really a fine for which he is entitled to presentencing custody credit. See 725 ILCS 5/110-14(a) (West 2008).

This district has found that the DNA analysis fee is "compensatory and a collateral consequence of defendant's conviction," and thus a fee rather than a fine, so that "the credit stated in section 110-14 *** cannot be applied." People v. Tolliver, 363 Ill. App. 3d 94, 97 (2006); see also Adair, 406 Ill. App. 3d at 145 (holding same); Williams, 405 Ill. App. 3d at 966 (holding same); but see People v. Long, 398 Ill. App. 3d 1028, 1034 (2010) (holding opposite). We see no reason to depart from these decisions.

We affirm the decision of the circuit court of Cook County.
Affirmed.

PRESIDING JUSTICE HALL, dissenting:

I respectfully disagree with the majority's finding that the trial court did not err in assessing the \$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)). Section 5-4-3 of the Unified

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Code of Corrections provides that any person convicted or found guilty of any offense classified as a felony under Illinois law must submit specimens of blood, saliva, or tissue to the Illinois Department of State Police for DNA analysis and pay an analysis fee of \$200. 730 ILCS 5/5-4-3(a), (j) (West 2008).

One of the purposes behind the statute is to create a database of the genetic identities of recidivist criminal offenders. *People v. Burdine*, 362 Ill. App. 3d 19, 30, 839 N.E.2d 573 (2005); see also *People v. Evangelista*, 393 Ill. App. 3d 395, 399, 912 N.E.2d 1242 (2009) ("obvious purpose of the statute is to collect from a convicted defendant a DNA profile to be stored in a database").

Defendant argues that the trial court erred in requiring him to pay additional DNA analysis-fees in connection with his present conviction. Defendant contends that the statute should not be read to require payment of additional analysis fees from an offender who has already submitted DNA samples pursuant to a prior conviction and has paid a corresponding analysis fee. I agree. See *People v. Rigsby*, 940 N.E.2d 113, 113-15 (2010) (Lampkin, J., dissenting).