

No. 1-09-3591

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).

FIFTH DIVISION
May 13, 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 7803
)	
JEROME WATSON,)	Honorable
)	Maura Slattery-Boyle,
Defendant-Appellant.)	Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and Howse concurred in the judgment.

O R D E R

HELD: Where defendant was properly assessed the \$200 DNA analysis fee, but the \$5 court system fee was vacated, his conviction and sentence were affirmed as modified.

Following a bench trial, defendant Jerome Watson was convicted of delivery of a controlled substance for selling cocaine to an undercover police officer. The trial court sentenced defendant to a term of six years' imprisonment. On

appeal, defendant does not contest his conviction or sentence, but challenges two fees that were assessed to him.

Defendant first contends that the \$200 DNA ID System fee pursuant to section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)) was erroneously assessed to him because he submitted a DNA sample in 2004, which was analyzed by the state police in 2005, in connection with a prior felony conviction. Defendant also points out that he was already assessed the \$200 fee in relation to a 2007 case, and he has supplemented the record on appeal with a copy of that fee order. Defendant contends that the statute contemplates imposition of a single, one-time fee and does not authorize additional assessments, which would be duplicative. On that basis, defendant claims that the trial court lacked statutory authority to assess the fee, and that it is therefore void and may be challenged at any time. Defendant acknowledges that his argument has been rejected by this court in *People v. Hubbard*, 404 Ill. App. 3d 100, 103 (2010) and *People v. Grayer*, 403 Ill. App. 3d 797, 801-02 (2010), but argues those cases were wrongly decided.

The State argues that defendant forfeited review of this issue because he failed to raise it in his post-sentencing motion. Alternatively, the State argues that the DNA fee was properly assessed. The State notes that the record is devoid of

any evidence that defendant has paid the fee, even if it was previously assessed in relation to one of his prior convictions.

This court has repeatedly analyzed the statutory language of section 5-4-3 and held that a defendant may be ordered to submit additional DNA samples and be assessed additional DNA fees following subsequent convictions. *People v. Anthony*, No. 1-09-1528, slip op. at 13 (March 31, 2011); *People v. Adair*, 406 Ill. App. 3d 133, 143-44 (2010); *People v. Williams*, 405 Ill. App. 3d 958, 966 (2010); *People v. Bomar*, 405 Ill. App. 3d 139, 150 (2010); *Hubbard*, 404 Ill. App. 3d at 103; *Grayer*, 403 Ill. App. 3d at 802; *People v. Marshall*, 402 Ill. App. 3d 1080, 1083 (2010), *appeal allowed*, 237 Ill. 2d 577 (2010); *contra People v. Rigsby*, 405 Ill. App. 3d 916, 919 (2010) and cases cited therein (only one DNA analysis and one fee is necessary per defendant).

In these decisions, we reasoned that collecting additional DNA samples would provide fresh samples, subject to new methods of collecting, analyzing and categorizing DNA. *Hubbard*, 404 Ill. App. 3d at 103; *Grayer*, 403 Ill. App. 3d at 801. In addition, under certain conditions, a defendant's DNA may be removed from the database, which would require taking a second sample upon conviction of another felony. *Williams*, 405 Ill. App. 3d at 966. In this case, we decline to depart from our prior holdings and find that defendant was properly assessed the DNA fee. Accordingly, the trial court's order assessing the fee was not

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void, and defendant forfeited this issue on appeal because he failed to properly preserve it in the trial court. *Marshall*, 402 Ill. App. 3d at 1083.

Defendant next contends, and the State agrees, that the \$5 Court System fee pursuant to section 5-1101(a) of the Counties Code (55 ILCS 5/5-1101(a) (West 2008)) was erroneously assessed to him as that fee applies only to violations of the Illinois Vehicle Code. Here, defendant was not convicted of a violation of the Vehicle Code. Accordingly, we vacate that part of the Fines, Fees and Costs order assessing the \$5 Court System fee.

For these reasons, we vacate the \$5 Court System fee from the Fines, Fees and Costs order, and affirm defendant's conviction and sentence in all other respects.

Affirmed as modified.