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2011 IL App (3d) 100108-U

Order filed October 18, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellee,	)	Kankakee County, Illinois,
	)	
v.	)	Appeal No. 3-10-0108
	)	Circuit No. 09-CF-458
MARQUIS J. JONES,	)	
	)	Honorable
Defendant-Appellant.	)	Clark E. Erickson,
	)	Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Carter and Justice Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court erred in assessing \$200 DNA analysis fee when defendant's DNA was previously entered into database after prior convictions, and in failing to grant \$710 presentence custody credit on the sentencing form.

¶ 2 Defendant Marquis Jones was found guilty of unlawful possession of a controlled substance following a jury trial and sentenced to a 30-month term of imprisonment. We vacate the \$200 DNA analysis fee, and grant \$710 in presentence custody credit.

¶ 3 **FACTS**

¶ 4 Defendant Marquis Jones was charged with unlawful possession of a controlled substance. 720 ILCS 570/402© (West 2008). A jury trial ensued where testimony established that two Kankakee police officers observed Jones and another individual engage in what appeared to be a drug transaction. Jones fled, and during the chase, threw a plastic baggy from his pocket. The bag was recovered and contained what later tested positive as containing cocaine, with a total weight of 2.125 grams. The jury found Jones guilty. At his sentencing hearing, the trial court imposed a 30-month term of imprisonment and a \$500 drug assessment and a \$100 street value fine. The trial court stated that Jones would receive \$5 per day credit for 143 days in presentence custody. The form order that listed the various fines, fees, and costs did not award Jones the \$5 per day credit. The order also listed a \$200 DNA analysis fee, a \$5 teen court fee, and a \$5 spinal cord fee. Jones appealed.

¶ 5 **ANALYSIS**

¶ 6 On appeal, Jones challenges the \$200 DNA analysis fee assessed against him and the trial court's failure to apply a \$5 per day credit for time he spent in custody.

¶ 7 The first issue is whether the trial court erred in imposing the \$200 DNA analysis fee. Jones argues that because he has prior felony convictions, he has already been ordered to submit to DNA testing and assessed the fee, and that a second sample would be "superfluous." Jones maintains that he is not required by statute to submit an additional DNA sample when his DNA is already stored in the database and should not be assessed a fee to do so.

¶ 8 Section 5-4-3(a) of the Unified Code of Corrections mandates that individuals convicted of a felony submit blood, saliva, or a tissue sample to the Illinois State Police, to be placed into a DNA database. 730 ILCS 5/5-4-3(a) (West 2009). The statute also authorizes the trial court to impose a \$200 DNA analysis fee. 730 ILCS 5/5-4-3(j) (West 2009). The statute's purpose is to collect a DNA

profile to be stored for future reference. *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009). Once a sample is collected, requiring additional samples would not serve that purpose. *Evangelista*, 393 Ill. App. 3d at 399. Statutory construction is an issue of law we review *de novo*. *People v. McCarty*, 223 Ill 2d 109, 124 (2006).

¶ 9 The Illinois Supreme Court recently determined this issue, resolving a conflict among the appellate districts. In *People v. Marshall*, the court rejected the State’s interpretation of the statute that required convicted felons to submit additional DNA samples and pay another \$200 fee once their samples were in the state database. *People v. Marshall*, 242 Ill. 2d 285, 301 (2011). The *Marshall* court found the statutory provision ambiguous, based on its silence regarding multiple submissions of DNA samples. *Marshall*, 242 Ill. 2d at 295. After looking at extrinsic aids for interpretation, the court concluded that the administrative regulations implementing section 5-4-3 “show an intent to require a single specimen of DNA be taken” for entry into the database. *Marshall*, 242 Ill. 2d at 297. The *Marshall* 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 the defendant is not currently registered in the DNA database. *Marshall*, 242 Ill. 2d at 303.

¶ 10 Based on *Marshall*, we find that the statute did not require Jones to be assessed a \$200 DNA analysis fee for the submission of an additional DNA sample. The facts at trial and the presentence investigation report establish that Jones previously served concurrent sentences in the DOC for felony convictions. As a consequence of his prior convictions, his DNA has been entered and maintained in the database. Accordingly, we vacate the \$200 DNA analysis fee imposed by the trial court.

¶ 11 The second issue is whether Jones is entitled to a \$5 per day credit for time spent in presentence custody. He argues that he should receive a credit of \$710 against his \$500 drug

assessment, \$100 street value fine, \$5 teen court fee and \$5 spinal cord fee. The State agrees.

¶ 12 A defendant is entitled to a \$5 per day for each day spent in presentence custody credited against fines assessed. 725 ILCS 5/110-14(a) (West 2002); *People v. Littlejohn*, 338 Ill. App. 3d 281, 283 (2003).

¶ 13 The record demonstrates that the trial court granted Jones a \$5 per day credit for the 143 days in custody when orally sentencing Jones. However, the form order that was entered did not award Jones the credit. We find that Jones is entitled to a credit of \$710 against the fees the trial court imposed. As noted by Jones, although the trial court awarded him credit for 143 days, per ruling in *People v. Williams*, Jones was not entitled to credit for the day of sentencing. *People v. Williams*, 239 Ill. 2d 503, 510 (2011) (day of sentencing counts as day of sentence, not as day of presentence custody). Because Jones was in presentence custody for 142 days, he should be credited \$710 against his \$500 drug assessment, \$100 street value fine, \$5 teen court fee and \$5 spinal cord fee.

¶ 14 For the foregoing reasons, the judgment of the circuit court of Kankakee County is vacated in part and affirmed in part.

¶ 15 Vacated in part and affirmed in part.