

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).

2011 IL App (4th) 100562-U

Filed 10/28/11

NO. 4-10-0562

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

|                                      |   |                  |
|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from      |
| Plaintiff-Appellee,                  | ) | Circuit Court of |
| v.                                   | ) | Champaign County |
| BOBBY TATUM,                         | ) | No. 07CF968      |
| Defendant-Appellant.                 | ) |                  |
|                                      | ) | Honorable        |
|                                      | ) | Heidi N. Ladd,   |
|                                      | ) | Judge Presiding. |

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JUSTICE TURNER delivered the judgment of the court.  
Justices Pope and McCullough concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where defendant had already given a DNA sample in a prior case and the trial court had ordered defendant to submit a DNA sample and pay the associated assessment if he had not given one, the circuit court clerk's records should not state defendant was ordered to pay a \$200 "State Offender DNA" assessment.
- ¶ 2 In April 2010, defendant, Bobby Tatum, filed a *pro se* postconviction petition, raising numerous contentions of error. In June 2010, the Champaign County circuit court dismissed defendant's petition as frivolous and patently without merit. Defendant appealed the dismissal. However, on appeal, defendant does not challenge the court's dismissal but rather, argues the court erred by ordering him to submit a duplicate sample of his deoxyribonucleic acid (DNA) and pay the \$200 DNA assessment when his DNA is already registered with the Illinois State Police. We affirm the dismissal of defendant's postconviction petition, vacate the \$200 assessment, and remand the cause with directions.

¶ 3

## I. BACKGROUND

¶ 4 In August 2007, a jury found defendant guilty of one count of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2006)). Defendant filed several posttrial motions, which the trial court denied. In September 2007, a presentence investigation report for defendant was filed. The report indicated defendant had five prior felonies, including (1) a July 23, 2001, conviction for unlawful possession of a weapon by a felon in Cook County (listed as case No. 00-CR-1968401) and (2) a July 31, 2006, conviction for possession of a controlled substance in Cook County (listed as case No. 06-CR-1411801). Moreover, the report noted defendant had a birth date of May 20, 1978, and numerous aliases, including Mark Cox. At a December 28, 2007, hearing, the court sentenced defendant to 24 years' imprisonment and ordered him to submit a specimen for DNA analysis and pay the \$200 DNA assessment "[i]f he ha[d] not already done so." The court did not enter a written order, addressing the DNA sample and the associated \$200 assessment.

¶ 5 Defendant appealed, and this court affirmed defendant's conviction and sentence. *People v. Tatum*, No. 4-08-0078 (August 20, 2009) (unpublished order under Illinois Supreme Court Rule 23).

¶ 6 On April 7, 2010, defendant filed his 60-page *pro se* postconviction petition. In the petition, defendant raises claims of ineffective assistance of both trial and appellate counsel. On June 23, 2010, the trial court dismissed defendant's petition in a written order, finding defendant's arguments were frivolous and patently without merit. On July 15, 2010, defendant filed a *pro se* notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009), and thus this court has jurisdiction under Illinois Supreme Court Rule 651

(eff. Dec. 1, 1984).

¶ 7 On appeal, this court allowed defendant to supplement the record with (1) an order, requiring defendant to pay the \$200 DNA assessment in defendant's 2006 possession-of-a-controlled substance case (listed as case No. 06-CR-14118); and (2) an Illinois State Police document, indicating the state police had a DNA profile for a Mark Cox with a birth date of May 20, 1979, as a result of a July 23, 2001, conviction for possession of a firearm by a felon.

¶ 8 II. ANALYSIS

¶ 9 Defendant's sole argument on appeal is the trial court erred in ordering him to submit a duplicate DNA sample and to pay the associated \$200 assessment. While defendant raises his issue for the first time on appeal, this particular issue is not subject to forfeiture. See *People v. Marshall*, 242 Ill. 2d 285, 302, 950 N.E.2d 668, 679 (2011) (noting a challenge to a court's authority to order a second DNA sample and require payment of the associated assessment alleges a void order and is not subject to forfeiture). This court reviews *de novo* a trial court's application of a statute. *People v. Coleman*, 399 Ill. App. 3d 1150, 1157, 927 N.E.2d 304, 310 (2010).

¶ 10 In *Marshall*, 242 Ill. 2d at 303, 950 N.E.2d at 679, our supreme court held section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2008)) "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." Consistent with *Marshall's* interpretation of section 5-4-3, the trial court ordered defendant to submit a DNA sample and pay the \$200 assessment only if he had not already given a DNA sample. While some of the identification information in defendant's supplemental documents do

not exactly match the identification information in the presentence investigation report, the rest of the information does match and indicates the Illinois State Police has defendant's DNA from a previous case. Despite the existence of a prior DNA sample, the Champaign County circuit clerk's website lists a \$200 "State Offender DNA" assessment for defendant in this case. See Clerk of the Circuit Court, Champaign County's Public Access to Court Records, *available at* <http://www.cccircuitclerk.com> (after choosing public access to court records, select "Criminal" under "Choose Division," then enter "07CF968" in the "Case #" field, and select "Case Search") (last visited October 18, 2011). Thus, while the trial court's order properly applied section 5-4-3, an error occurred in the circuit court clerk's records, which incorrectly required defendant to pay the \$200 DNA assessment. Thus, we vacate the \$200 "State Offender DNA" assessment listed in the circuit court clerk's records and remand the cause to the trial court to correct the error.

¶ 11

### III. CONCLUSION

¶ 12 For the reasons stated, we affirm the Champaign County circuit court's dismissal of defendant's postconviction petition, vacate defendant's \$200 "State Offender DNA" assessment, and remand the cause for removal of the \$200 "State Offender DNA" assessment from the circuit court clerk's records. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal because we have affirmed the dismissal of the postconviction petition and the State's brief did appropriately respond to and defend against defendant's appeal.

¶ 13 Affirmed in part and vacated in part; cause remanded with directions.