

No. 1-09-3208

**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).

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. 08 CR 14117   |
|                                      | ) |                   |
| WILLIAM FORD,                        | ) | Honorable         |
|                                      | ) | Charles P. Burns, |
| Defendant-Appellant.                 | ) | Judge Presiding.  |

JUSTICE JAMES FITZGERALD SMITH delivered the judgment of the court.  
Presiding Justice Epstein and Justice Howse concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where defendant was previously convicted of a felony and submitted a DNA sample, the \$200 DNA analysis fee was improperly assessed; and where defendant was convicted of a felony, he could be properly assessed the \$25 court services fee and the \$10 Arrestee's Medical Costs Fund fee.
- ¶ 2 After a bench trial, defendant William Ford was convicted of delivery of a controlled substance and sentenced as a Class X offender to seven years in prison. The court also assessed various fines and fees. On appeal, defendant contends that three of the fees entered on the fines

and fees order must be modified. We vacate the \$200 DNA analysis fee and affirm the two other fees.

¶ 3 In an unpublished order entered on January 28, 2011, we affirmed the assessment of all three fees. Subsequently, the Illinois Supreme Court issued a supervisory order directing us to vacate our prior judgment and reconsider it in light of *People v. Marshall*, 242 Ill. 2d 285 (2011). Upon reconsideration, we find that the \$200 DNA fee must be vacated.

¶ 4 During a drug surveillance by police officers, defendant was seen selling cocaine in two separate transactions on June 27, 2008. The trial court found defendant guilty of two counts of delivery of a controlled substance, a Class 2 felony, and based on his criminal history, imposed a seven-year prison term. Defendant now challenges the assessment of three fees only.

¶ 5 First, defendant asserts that the trial court was not authorized to assess the \$200 DNA fee (730 ILCS 5/5-4-3(j) (West 2008)) because he submitted a DNA sample for a prior conviction. We agree. Pursuant to the supreme court's ruling in *Marshall*, a trial court is only authorized to order a defendant to submit a DNA sample and pay the DNA analysis fee once, when the defendant is not currently in the DNA database. *Marshall*, 242 Ill. 2d at 303. The record here shows that defendant was convicted of a felony, possession of a controlled substance, on April 8, 2003. Defendant also points to a State Police DNA Indexing Laboratory Report, of which we may take judicial notice (*People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010)), that shows, based on the 2003 conviction, defendant submitted a DNA sample for analysis and a profile was subsequently obtained. Under these circumstances, the trial court was not authorized to impose the \$200 DNA analysis fee. *Marshall*, 242 Ill. 2d at 302; see also *People v. Leach*, 2011 IL App (1st) 090339 ¶ 38 (finding that in order to vacate a DNA charge under *Marshall*, a defendant need only show that he was convicted of a felony after the DNA requirement went into effect on January 1, 1998).

¶ 6 Second, defendant asserts that the \$25 court services fee (55 ILCS 5/5-1103 (West 2008)) was improperly imposed because he was not convicted of one of the statute's enumerated offenses. The State contends that the plain language of the statute clearly intends for the fee to apply to all criminal cases. We agree with the State.

¶ 7 Section 5-1103 of the Counties Code provides that:

"A county board may enact by ordinance or resolution a court services fee dedicated to defraying court security expenses incurred by the sheriff in providing court services or for any other court services deemed necessary by the sheriff to provide for court security. \*\*\* Such fee shall be paid in civil cases by each party at the time of filing the first pleading, paper or other appearance. \*\*\* In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon \*\*\* findings of guilty, resulting in a judgment of conviction, or order of supervision, or sentence of probation without entry of judgment pursuant to [various enumerated criminal statutes.]" 55 ILCS 5/5-1103 (West 2008).

¶ 8 This court has interpreted this statute to mean that the court services fee can be assessed for any criminal conviction. *People v. Williams*, 2011 IL App (1st) 091667, ¶ 18; *People v. Adair*, 406 Ill. App. 3d 133, 144-45 (2010). We reasoned that the clear purpose of the \$25 fee is to defray the costs of court security, and in light of the clear purpose, we have explicitly rejected defendant's interpretation of the wording. *Adair*, 406 Ill. App. 3d at 144. We see no reason to depart from the holdings in *Williams* and *Adair*, and find the \$25 court services fee was properly assessed against defendant.

¶ 9 Lastly, defendant contends that the \$10 Arrestee's Medical Costs Fund fee (730 ILCS 125/17 (West 2006)) was unauthorized because he required no medical care while in custody and the county jail incurred no medical costs from him.

¶ 10 Defendant directs attention to the portions of the relevant statute as it existed at the time of defendant's offense in June 2008. The statute then provided that the county was entitled to a \$10 fee for each conviction and the money collected in this fund must be used "for medical expenses relating to the arrestee while he or she is in the custody of the sheriff and administration of the Fund." 730 ILCS 125/17 (West 2006).

¶ 11 The State points to the amended version of the statute, effective after August 15, 2008, as it existed when defendant was sentenced in August 2009. The amended version provided that the \$10 fees collected must be used "for medical expenses and administration of the Fund." 730 ILCS 125/17 (West 2008). Accordingly, the amended version eliminated any link between the \$10 fee and the individual arrestee's medical expenses.

¶ 12 After the briefs in this case were filed, the Illinois Supreme Court specifically held that the preamended statute authorized the trial court to assess the \$10 fee against a defendant, regardless of whether the defendant actually received medical services. *People v. Jackson*, 2011 IL 110615, ¶¶ 19, 22. Therefore, the trial court properly assessed the \$10 fee against defendant.

¶ 13 For the foregoing reasons, we vacate the \$200 DNA analysis fee, and affirm the judgment of the trial court in all other respects.

¶ 14 Affirmed in part; vacated in part.