2012 IL App (1st) 093591-UB

FIFTH DIVISION
February 3, 2012

No. 1-09-3591

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.

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

O R D E R

HELD: Where $200 DNA analysis fee and $5 court system fee were vacated, defendant's 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 the assessment of a $200 DNA analysis fee and a $5 court system fee. On May 13, 2011, we issued an order vacating only the court system fee. The Illinois Supreme Court directed that we vacate our order and reconsider in light of People v. Marshall, 242 Ill. 2d 285 (2011), which we now do.

Defendant first contends that the $200 DNA analysis fee, imposed 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.

While the State initially responds that defendant forfeited review of this issue because he failed to raise it in his post-sentencing motion, the court in Marshall held that "[a] challenge to an alleged void order is not subject to forfeiture." Marshall, 242 Ill. 2d at 302. Here the trial court lacked statutory authority to assess the fee, and it is therefore void and may be challenged at any time. As to the merits of assessing the DNA ID System fee, in Marshall our supreme court concluded

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." Id. at 303. The record shows that defendant's DNA was already on file, and he has already paid the DNA ID System fee in connection with a prior felony conviction. We therefore vacate the $200 DNA analysis fee.

Defendant next contends, and the State agrees, that the $5 court system fee, imposed 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 $200 DNA analysis fee and the $5 court system fee from the Fines, Fees and Costs order, and we affirm defendant's conviction and sentence in all other respects.

Affirmed as modified.