2012 IL App (1st) 111659-U

SIXTH DIVISION
SEPTEMBER 28, 2012

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).

No. 1-11-1659

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. 10 CR 10060
	)	
DONALD LEWIS,	)	Honorable
	)	Shelley Sutker-Dermer,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *Held*: Where the trial court assessed a duplicative DNA analysis fee, it will be reversed where the trial court assessed a court service fee for an offense not enumerated by the statute, it will be affirmed.

¶ 2 Following a bench trial, defendant Donald Lewis was convicted of delivery of a controlled substance and sentenced to three years in prison. On appeal, defendant contends that this court should vacate the trial court's assessment of a $200 DNA analysis fee and a $25 court services fee as part of his sentence.

¶ 3 Defendant contends that the DNA analysis fee cannot be imposed in this case because he has previously been convicted of a felony and therefore has already submitted DNA for analysis and been assessed the fee. 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 corresponding payment of the analysis fee, only once where the defendant is not currently registered in the DNA database. *Marshall*, 242 Ill. 2d at 303. An order imposing a duplicative DNA analysis fee is void and must be vacated, as it exceeds statutory authority. *Marshall*, 242 Ill. 2d at 302; *People v. Anthony*, 2011 IL App (1st) 091528-B, ¶ 23.

¶ 4 In the instant case, the records, of which we may take judicial notice (*People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010)), reflect that defendant was convicted of and sentenced on two prior felonies in 2006. Therefore, we can presume that defendant is already registered in the DNA database. *People v. Leach*, 2011 IL App (1st) 090339, ¶ 38 (holding 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). Accordingly, we agree with defendant that the $200 DNA analysis fee is duplicative and must be vacated.

¶ 5 Defendant next challenges the assessment of a $25 court services fee. 55 ILCS 5/5-1103 (West 2010). He argues that this fee should not have been imposed upon him because he was not convicted of any of the crimes listed in the statute authorizing the fee. The statute provides in pertinent part as follows:

> "In criminal, local ordinance, county ordinance, traffic and conservation cases, such fee shall be assessed against the defendant upon a plea of guilty, stipulation of facts or findings of guilty, resulting in a judgment of conviction, or order of supervision, or sentence of probation without entry of judgment pursuant to

> [certain enumerated criminal statutes]." 55 ILCS 5/5-1103 (West 2010).

This court has previously determined that the above language does not limit assessment of the fee to convictions entered pursuant to the certain designated statutes. *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 103. Rather, the statute (1) permits assessment of the fee upon any judgment of conviction, and (2) additionally permits assessment of the fee for sentences of probation made without entry of a judgment of conviction, for certain limited and enumerated criminal provisions. *Lattimore*, 2011 IL App (1st) 093238, ¶ 105. Here, a judgment of conviction was entered for defendant. Accordingly, assessment of the fee was proper.

¶ 6 For the reasons explained above, we vacate that portion of the trial court's order requiring defendant to submit an additional DNA sample and requiring him to pay the $200 DNA analysis fee. The clerk of the circuit court is ordered to enter a modified fines, fees, and costs order consistent with our decision. We affirm the judgment of the circuit court of Cook County in all other respects.

¶ 7 Affirmed in part; vacated in part.