

¶ 4 On March 5, 2008, the State charged defendant by indictment with two counts of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2008)). On February 2, 2009, defendant pleaded guilty to both counts in McLean County case No. 08-CF-212. On January 27, 2010, the trial court sentenced defendant to consecutive five-year extended prison terms. The trial court ordered defendant to pay "[m]andatory financial consequences," including a \$20 violent-crime-victim's-fund fine, a \$200 DNA fee, a \$200 domestic-violence fine, a \$10 domestic-battery fine, and a \$200 public defender reimbursement fee. The trial court also informed defendant he would "be receiving a statement from the clerk reflecting what the [c]ourt has ordered payable." The clerk's office assessed a \$10 drug-court fine and a \$15 children's-advocacy-center fine in its "notice to party."

¶ 5 On January 27, 2010, defendant filed a motion to withdraw guilty plea and a motion to reconsider sentence. On June 28, 2010, the trial court denied defendant's motion to withdraw guilty plea and defendant's motion to reconsider sentence insofar as it requested a reduction of sentence. This appeal followed.

¶ 6 **II. ANALYSIS**

¶ 7 On appeal, defendant argues (1) the \$200 DNA fee must be vacated because defendant has already paid the fee and was subject to DNA sampling and indexing when he was previously convicted of a felony; (2) the \$200 public defender reimbursement fee must be vacated, as it was imposed without a hearing on defendant's ability to pay and therefore denied him due process; and (3) the drug-court fine and children's advocacy-center fine must be vacated because they were imposed by the circuit clerk's office, a nonjudicial body unauthorized to impose fines. We consider these in turn.

¶ 8

A. DNA Analysis Fee

¶ 9 Defendant argues the trial court improperly ordered him to pay a \$200 DNA analysis fee under section 5-4-3 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4-3 (West 2010)). Specifically, defendant contends he has already been assessed a DNA analysis fee in a previous felony conviction and therefore cannot be ordered to pay it again. The State concedes defendant is not required to pay the fee, and we agree.

¶ 10 Section 5-4-3(j) of the Unified Code requires any person convicted of a felony in Illinois to submit a saliva, blood, or tissue specimen to the State Police and pay an analysis fee of \$200 (730 ILCS 5/5-4-3(j) (West 2010)). The trial court may only "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." *People v. Marshall*, 242 Ill. 2d 285, 303, 950 N.E.2d 668, 679 (2011). Records from the DNA indexing laboratory indicate a DNA submission by defendant on May 12, 2003. He has therefore demonstrated he is in the DNA index database and has previously been assessed the \$200 fee. Accordingly, we vacate the order requiring defendant to pay the \$200 DNA analysis fee.

¶ 11

B. Public Defender Reimbursement Fee

¶ 12 Defendant next argues the public defender reimbursement fee must be vacated because the trial court did not hold a hearing to determine defendant's ability to pay before it assessed the fee. The State contends defendant forfeited his right to challenge the fee pursuant to Supreme Court Rule 604(d) because he failed to raise the issue in his motion to reconsider sentence (Ill. S. Ct. R. 604(d) (amended eff. July 1, 2006)). The State also contends the clerk's office, and not defendant, paid \$47 of the \$200 fee after defendant forfeited his bail bond deposit

when he failed to appear at a pretrial hearing on July 18, 2008. Further, the State argues defendant no longer owes any public defender reimbursement fees because the remaining balance of \$153 was waived by the public defender's office.

¶ 13 Section 113-3.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-3.1 (West 2010)) allows a trial court to order a defendant to pay a reasonable sum to reimburse the county for representation by court-appointed counsel. However, before a court can order a defendant to pay reimbursement, section 113-3.1(a) requires the court to hold a hearing into the defendant's financial circumstances and find an ability to pay. 725 ILCS 5/113-3.1(a) (West 2010); *People v. Love*, 177 Ill. 2d 550, 559, 687 N.E.2d 32, 36 (1997). In addition, a defendant must be given an opportunity to present evidence regarding his ability to pay and other relevant circumstances. *People v. Johnson*, 297 Ill. App. 3d 163, 164-65, 696 N.E.2d 1269, 1270 (1998). Absent such a hearing, an order for reimbursement must be vacated and remanded for a section 113-3.1 hearing. See *People v. Bass*, 351 Ill. App. 3d 1064, 1070, 815 N.E.2d 462, 468 (2004).

¶ 14 Here, the record shows defendant was not given the opportunity to present evidence or be heard regarding the imposition of the \$200 reimbursement fee. Rather, the fee was imposed as a matter of course during defendant's sentencing hearing on January 27, 2010. In fact, the record reflects defendant inquired into the trial judge's statement he would "be receiving a statement from the clerk reflecting what the [c]ourt has ordered payable." Defendant was then notified he was to pay a \$200 public defender reimbursement fee as part of the assessments the court ordered payable.

¶ 15 The State initially contends defendant failed to raise the issue in his motion to

reconsider sentence and has therefore forfeited his right to challenge the fee. Although defendant failed to object to the reimbursement fee in the trial court, forfeiture does not apply when the record shows the court ordered defendant to pay reimbursement, *sua sponte*, without any warning. *People v. Roberson*, 335 Ill. App. 3d 798, 804, 780 N.E.2d 1144, 1149 (2002) (citing *Love*, 177 Ill. 2d at 564, 687 N.E.2d at 39).

¶ 16 The State next asserts the clerk's office, and not the defendant, paid the \$47 out of a bail bond defendant forfeited. The State contends the fees were properly paid out of the forfeited bond, relying on *People v. Kelly*, 361 Ill. App. 3d 515, 838 N.E.2d 236 (2005). The State is incorrect.

¶ 17 The trial court ordered defendant's bond forfeited and issued an arrest warrant when defendant failed to appear at a pretrial hearing on July 22, 2008. Defendant had been in a different part of the courthouse when the hearing took place. Accordingly, on July 25, 2008, the court recalled the warrant and no judgment was taken on the forfeiture. Indeed, at sentencing, the trial judge mentioned defendant had cash posted as bond. Thus, defendant's bond was not forfeited; rather it was available to apply to defendant's assessments. A defendant can be required to reimburse public defender fees pursuant to the requirements of section 113-3.1 of the Code (725 ILCS 5/113-3.1 (West 2010)). The main requirement under the statute is a hearing to determine defendant's ability to pay. The existence of a bond is not in itself conclusive evidence of defendant's ability to pay. *People v. Dalton*, 406 Ill. App. 3d 158, 160-61, 941 N.E.2d 428, 432 (2010). Once a hearing has been held, if the trial court finds reimbursement is appropriate, the court may *then* order the fee to be paid out of the bail bond. *People v. Maxon*, 318 Ill. App. 3d 1209, 1214, 744 N.E.2d 339, 343 (2001). As stated, defendant was never afforded a hearing

on his ability to pay. It was therefore improper for the trial court to apply defendant's bail bond to the public defender reimbursement fee. Consequently, we remand this matter to the trial court to conduct a section 113-3.1 hearing on defendant's ability to pay. (The public defender waived \$153 of the fee when defendant's posted bond proved insufficient to cover the entire \$200. Therefore, the trial court should consider only defendant's ability to pay the remaining balance of \$47.)

¶ 18 C. Drug-Court and Children's-Advocacy-Center Fines

¶ 19 Defendant last challenges the \$10 drug-court fine and \$15 children's-advocacy-center fine. Defendant argues the fines were not ordered by the court but imposed by the clerk's office, a nonjudicial body unauthorized to impose fines. The State contends the trial court sentenced defendant to pay "[m]andatory financial consequences," which includes the \$10 drug-court fine and the \$15 children's-advocacy-center fine.

¶ 20 The drug-court and children's-advocacy's-center assessments have been found to constitute fines, which cannot be imposed by the circuit clerk. *People v. Folks*, 406 Ill. App. 3d 300, 306, 943 N.E. 2d 1128, 1133 (2010). These fines have also been found to be mandatory. *Folks*, 406 Ill. App. 3d at 305, 943 N.E. 2d at 1132. At the January 27, 2010, sentencing hearing, the trial court informed defendant he would "be receiving a statement from the clerk reflecting what the [c]ourt has ordered payable." The trial court also ordered defendant to pay "[m]andatory financial consequences" where certain fines, such as a \$20 violent-crime-victim's-fund fine, a \$200 domestic-violence fine, and \$10 domestic-battery fine were specified. However, the trial court did not specify, during the sentencing hearing, a \$10 drug-court fine or a \$15 children's-advocacy-center fine would be imposed. Nor were such fines listed in the court's

supplemental sentencing order, although other fines were so specified. The fines complained of were listed in a "notice to party" issued by the clerk's office. Assuming these fines were imposed by the clerk's office, we vacate such fines and reimpose them. See *Folks*, 406 Ill. App. 3d at 306-07, 943 N.E. 2d at 1133 (reimposing \$10 drug-court and \$15 children's-advocacy-center fines, assuming the circuit clerk's office imposed the fines where it was unclear from the record whether the trial court or circuit clerk imposed such fines).

¶ 21

III. CONCLUSION

¶ 22 For the reasons stated, we vacate (1) the \$200 DNA analysis fee; (2) the \$200 public defender reimbursement fee; and (3) the circuit clerk's assessment of the \$10 drug-court and \$15 children's-advocacy-center fines. We reimpose the \$10 drug-court and \$15 children's-advocacy-center fines and remand for a section 113-3.1 hearing with respect to the \$47 of public defender fees ordered to be paid from defendant's bond, and issuance of an amended sentencing judgment consistent with this order. We affirm in all other respects. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 23 Affirmed in part as modified, vacated in part, and cause remanded with directions.