

NOTICE
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2012 IL App (4th) 100594-U

Filed 2/10/12

NO. 4-10-0594

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
AARON SMITH,)	No. 09CF2171
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Pope and Cook concurred in the judgment .

ORDER

¶ 1 *Held:* Defendant was not entitled to additional sentence credit; trial court could impose fee for arrestee's medical costs fund; and trial court could not impose \$200 DNA analysis fee.

¶ 2 On May 28, 2010, a jury found defendant, Aaron Smith, guilty of two counts of aggravated battery (720 ILCS 5/12-4(a), (b)(8) (West 2008)). On July 28, 2010, the trial court sentenced him to concurrent 10-year terms of imprisonment on each count.

¶ 3 On appeal, defendant argues (1) he is entitled to additional sentence credit; (2) the \$10 medical fee was not proper; and (3) the \$200 deoxyribonucleic acid (DNA) analysis fee was not proper. We affirm as modified, vacate in part, and remand with directions.

¶ 4 On December 30, 2009, the State charged defendant with two counts of aggravated battery (720 ILCS 5/12-4(a), (b)(8) (West 2008)). A warrant for defendant's arrest was issued and bond set in the amount of \$10,000. According to the presentence report, defendant

was in custody from March 11, 2010, to April 2, 2010. A jury found defendant guilty of two counts of aggravated battery on May 28, 2010. A docket entry made the same date states that "[d]efendant's bond is to continue."

¶ 5 The presentence report states that on June 24, 2010, a parole agent arrested defendant pursuant to an Illinois Department of Corrections (DOC) warrant and defendant was returned to DOC. On July 28, 2010, the trial court sentenced defendant to concurrent 10-year terms of imprisonment on each count. Further, the court awarded defendant 40 days' sentence credit, stating that "[t]he original calculation was 23 days, I believe there would be at least an additional 17 days since he was in custody." The court based its calculation of an additional 17 days' sentence credit "from the day that he was picked up on the DOC warrant."

¶ 6 This appeal followed.

¶ 7 Defendant argues he is entitled to additional sentence credit for time in custody between the time he was arrested pursuant to a DOC warrant on June 24, 2010, and his sentencing date of July 28, 2010.

¶ 8 Section 5-8-7(b) of the Unified Code of Corrections (730 ILCS 5/5-8-7(b) (West 2008)) provides an offender shall be given credit on his sentence "for time spent in custody as a result of the offense for which the sentence was imposed." Section 5-8-7(b) requires that a defendant receive the credit, and forfeiture rules do not apply. *People v. Hernandez*, 345 Ill. App. 3d 163, 170, 803 N.E.2d 577, 582 (2004). Our review in this case is *de novo*. See *People v. Robinson*, 172 Ill. 2d 452, 457, 729, 667 N.E.2d 1305, 1307 (1996).

¶ 9 On June 24, 2010, while defendant was released on bond in the instant case, defendant was arrested pursuant to a DOC warrant and returned to DOC. Defendant did not

surrender himself in exoneration of his bond. In *People v. Arnhold*, 115 Ill. 2d 379, 383, 504 N.E.2d 100, 101 (1987), our supreme court held that "a defendant who is out on bond on one charge, and who is subsequently rearrested and returned to custody on another charge, is not returned to custody on the first charge until his bond is withdrawn or revoked." When that event occurs, the defendant is then considered to be in simultaneous custody on both charges. *Arnhold*, 115 Ill. 2d at 384, 504 N.E.2d at 101. In this case, defendant did not surrender himself in exoneration of his bond. Defendant spent a total of 23 days in custody for the instant offense, between March 11, 2010, and April 2, 2010. Therefore, we modify defendant's sentence to reflect 23 days of sentence credit.

¶ 10 Defendant next argues that the fee for the arrestee's medical costs fund must be vacated. See 730 ILCS 125/17 (West 2008). Defendant argues that the plain language of the relevant statute provides that the fee is to be imposed only when the defendant required medical treatment while in custody and, as defendant here required none, imposition of the fee was improper. The State responds that the statute's plain language creates a fund to pay the medical costs of any arrestee who requires medical treatment while in custody and, accordingly, imposes the charge following any conviction. We agree with the State.

¶ 11 Section 17 provides that, when a person held in custody requires medical services, the county or any private entity providing such services shall be entitled to reimbursement from the county or from the arrestee's medical costs fund. 730 ILCS 125/17 (West 2008). The statute further states that "[t]o the extent that such person is reasonably able to pay for such care *** he or she shall reimburse the county or arresting authority." 730 ILCS 125/17 (West 2008). The statute also provides as follows:

"The county shall be entitled to a \$10 fee for each conviction or order of supervision for a criminal violation, other than a petty offense or business offense. The fee shall be taxed as costs to be collected from the defendant, if possible, upon conviction or entry of an order of supervision. The fee shall not be considered a part of the fine for purposes of any reduction in the fine.

All such fees collected shall be deposited by the county in a fund to be established and known as the Arrestee's Medical Costs Fund. Moneys in the Fund shall be used solely for reimbursement of costs 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 2008).

¶ 12 The statutory language simply does not support defendant's contention that the fee is to be collected only if the defendant requires medical services while in custody. Rather, the fee "shall *** be collected from the defendant, if possible, upon conviction or entry of an order of supervision." 730 ILCS 125/17 (West 2008). Thus, the statute can reasonably be construed as creating a fund to be used for medical expenses for all arrestees, not just for the defendant in question. Further, interpreting the statute as defendant suggests makes no sense because the statute already requires the arrestee to reimburse the county for his medical care, if he can. Requiring an additional contribution to the fund of \$10 only from those arrestees who have received medical care, but not others, is illogical. See *People v. Jackson*, 2011 IL 110615, ¶¶ 14, 15, 455 N.E.2d 1164, 1169 (citing *People v. Evangelista*, 393 Ill. App. 3d 395, 399, 912 N.E.2d

1242, 1246-1247 (2009) (Second District)), see also *People v. Unander*, 404 Ill. App. 3d 884, 889, 936 N.E.2d 795, 799 (2010) (Fourth District).

¶ 13 Defendant next argues the \$200 DNA analysis fee was not proper. The State agrees with defendant that the DNA analysis fee must be vacated. Defendant provided a DNA sample following an earlier conviction. The obvious purpose of the statute is to collect from a convicted defendant a DNA profile to be stored in a database. See 730 ILCS 5/5-4-3(e) (West 2008). Once a defendant has submitted a DNA sample, requiring additional samples would serve no purpose. Thus, we agree with the parties that the fee must be vacated.

¶ 14 For the foregoing reasons, we modify defendant's sentence to reflect 23 days of sentence credit; vacate the DNA analysis fee; and remand for issuance of an amended sentencing judgment consistent with this order. As part of our judgment, we award the State its \$50 statutory assessment as costs of this appeal.

¶ 15 Affirmed as modified; vacated in part; and cause remanded with directions.