



¶ 4

## BACKGROUND

¶ 5 On May 15, 2009, the defendant was charged with three counts of aggravated criminal sexual abuse. On November 12, 2009, the defendant entered negotiated pleas of guilty to the charges. He agreed to plead guilty to the charges in exchange for concurrent sentences of four years' imprisonment. As part of that sentence, the court imposed a \$200 DNA analysis fee. The defendant is appealing the denial of a motion to withdraw his guilty pleas.

¶ 6

## ANALYSIS

¶ 7 The sole issue of this appeal is whether the defendant can receive monetary credit to offset a DNA analysis fee. The issue of monetary credit against a defendant's fine cannot be waived and may be raised for the first time on appeal. *People v. Woodard*, 175 Ill. 2d 435, 457 (1997). Whether a defendant received proper credit against his fine is a question of law that we review *de novo*. *People v. Sulton*, 395 Ill. App. 3d 186, 189 (2009).

¶ 8 Section 110-14(a) of the Code of Criminal Procedure of 1963 states:

"Any person incarcerated on a bailable offence who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of \$5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine." 725 ILCS 5/110-14(a) (West 2008).

The supreme court recently determined that the monetary charge of \$200 for DNA analysis was not a fine but a fee, and a defendant would not be credited the \$5-a-day offset. *People v. Johnson*, 2011 IL 111817.

¶ 9 A fine, unlike a fee, is a " 'pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense.' " *Id.* at ¶ 16 (quoting 19 Ill. L. and Prac. *Fines, Forfeitures and Penalties* § 2 (2009)). The DNA analysis charge is a compensatory fee,

rather than a pecuniary fine, because it "seeks to compensate the state for professional services." *Id.* at ¶ 19.

¶ 10 Further, the DNA analysis charge is a fee because it is only assessed once, regardless of how many times a defendant may be convicted. *Id.* at ¶ 20; *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). Indeed, if the purpose of the DNA analysis is to enter the defendant into a DNA database, then a one-time collection of DNA and a fee are all that is required to satisfy this purpose. *Marshall*, 242 Ill. 2d at 297-96.

¶ 11 In this case, the defendant will not be credited with the DNA analysis fee offset from the 183 days he spent in presentence custody because, as per *Johnson*, the fee is a one-time, compensatory monetary charge.

¶ 12 **CONCLUSION**

¶ 13 For the foregoing reasons, the judgment of the circuit court of Montgomery County is affirmed.

¶ 14 Affirmed.