

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).

2013 IL App (3d) 110710-U

Order filed March 4, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-11-0710
)	Circuit No. 07-CF-2106
MARTEL DANIELS,)	
)	Honorable
Defendant-Appellant.)	Daniel J. Rozak,
)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) Defendant's postconviction petition did not raise the gist of a constitutional claim; and (2) the trauma center fee and DNA analysis fee are vacated.
- ¶ 2 Defendant, Martel Daniels, pled guilty to one count of home invasion (720 ILCS 5/12-11(a)(2) (West 2006)) and received a 17-year prison sentence. On appeal, defendant argues that the trial court erred in: (1) summarily dismissing his postconviction petition; and (2) imposing a trauma center fee and deoxyribonucleic acid (DNA) analysis fee. We affirm in part and vacate in part.

¶ 3

FACTS

¶ 4 On August 12, 2008, the case was called for a plea agreement hearing. The State represented to the court that defendant would plead guilty to one count of home invasion and, in exchange, the State would *nolle prosequi* the remaining charges and recommend a sentence of 17 years' imprisonment. The court inquired "[i]s all of that your understanding of the negotiations?" Defendant agreed. The court admonished defendant that "the agreement that you have with the State is not an agreement for a sentence. It is an agreement for a recommendation to me on a sentence. I can follow that recommendation, if I want to, but I am not required to." Defendant agreed and further acknowledged that no one had induced him to plead guilty by any promises, other than the State's recommendations. The court found that defendant's plea was "not obtained by force, threats or any promises, and it [was] made knowingly and voluntarily." The court sentenced defendant to 17 years' imprisonment. The court also entered a criminal cost sheet that ordered defendant to pay a \$100 trauma center fee and a \$200 DNA database analysis fee.

¶ 5 On July 27, 2011, defendant filed a *pro se* postconviction petition. The petition alleged that he had entered into a plea agreement with the State for a 17-year prison sentence, and the prosecutor and defense counsel had calculated that defendant's actual time served would be 8 years' imprisonment. The calculation was based on serving 50% of the 17-year sentence, less both time served in custody awaiting trial and 180 days of meritorious good time credit (MGT). See 730 ILCS 5/3-6-3 (West 2006). However, the Illinois Department of Corrections (DOC) officially suspended the "processing and awarding" of MGT credit indefinitely. Defendant argued that the suspension of MGT altered the agreed-upon sentence, and therefore breached the contract between him and the State. The trial court dismissed the petition, ruling that: (1) the MGT credit was never presented to

the court as part of the parties' negotiated disposition; (2) defendant indicated at the plea hearing that he had not been induced to plead guilty by any promises other than the State's recommendations; and (3) defendant's petition was frivolous and patently without merit.

¶ 6

ANALYSIS

¶ 7

I. Postconviction Petition

¶ 8 Defendant argues that the trial court erred in dismissing his postconviction petition because it looked only to the voluntariness of his plea, while defendant argued that his petition raised the gist of a due process right claim because he did not receive the benefit of the bargain he made with the State.

¶ 9 The Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq.* (West 2006)) provides a three-stage process for the adjudication of postconviction petitions. *People v. Hodges*, 234 Ill. 2d 1 (2009). At the first stage, the trial court must independently determine whether the petition is "frivolous or is patently without merit[.]" 725 ILCS 5/122-2.1(a)(2) (West 2006). The petition's allegations, liberally construed and taken as true, need only present the gist of a constitutional claim. *People v. Harris*, 224 Ill. 2d 115 (2007). We will uphold the dismissal of a petition when the record contradicts a defendant's allegations. *People v. Rogers*, 197 Ill. 2d 216 (2001). We review the first-stage dismissal of a postconviction petition *de novo*. *People v. Morris*, 236 Ill. 2d 345 (2010).

¶ 10 Here, the trial court did not err in dismissing defendant's petition. First, defendant's contention that the State had promised that he would actually serve only 8 years of his 17-year prison sentence not only does not appear in the record, but is affirmatively contradicted by it. Defendant agreed at the plea hearing that his guilty plea was offered in exchange for a 17-year prison sentence, and, when asked, did not indicate that there were any other promises. MGT or a calculation of

defendant's actual time served was not part of the plea offered by the State and accepted by defendant on the record.

¶ 11 Secondly, the application or denial of MGT is a collateral consequence of defendant's guilty plea, and therefore its absence cannot serve as a basis for withdrawal of the plea. See *People v. Hughes*, 2012 IL 112817 (failure to inform a defendant of a collateral consequence was not a basis for withdrawing a plea of guilty). "'A collateral consequence is one that is not related to the length or nature of the sentence imposed on the basis of the plea.'" *People v. Williams*, 188 Ill. 2d 365, 372 (1999) (quoting *State v. McFadden*, 884 P. 2d 1303, 1304 (Utah App. 1994)). Although MGT credit impacts the amount of time that defendant spends in prison, "the application of the statute does not have a definite, immediate or automatic effect on the sentence imposed." *People v. Castano*, 392 Ill. App. 3d 956, 959 (2009). The DOC and not the trial court ultimately has discretion to award MGT. 730 ILCS 5/3-6-3(a)(3) (West 2006). Therefore, defendant's sentence term was not affected by the DOC's suspension of MGT, and the trial court properly dismissed his postconviction petition.

¶ 12

II. Fees

¶ 13 Next, defendant argues that the trial court erred when it imposed a trauma center fee and DNA analysis fee. The State confesses error, and we vacate defendant's trauma center fee and DNA analysis fee.

¶ 14 In the instant case, the trauma center fee was assessed under section 5-9-1.1(b) of the Unified Code of Corrections (Code). 730 ILCS 5/5-9-1.1(b) (West 2006). Section 5-9-1.1(b) of the Code permits a trial court to impose a \$100 penalty, the proceeds of which are to be deposited into the Trauma Center Fund, for drug related convictions. 730 ILCS 5/5-9-1.1 (West 2006). Defendant was improperly assessed this penalty because he was convicted of home invasion, a nondrug-related

conviction. Therefore, we vacate the \$100 trauma center fee.

¶ 15 We also vacate defendant's DNA analysis fee. Section 5-4-3 of the Code mandates that all individuals convicted of an offense that is classified as a felony under Illinois law after January 1, 1998, submit to the taking, analyzing, and indexing of their DNA, and the payment of an analysis fee. 730 ILCS 5/5-4-3(a), (j) (West 2008). However, a defendant is only required to submit to and pay for the DNA analysis when he is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285 (2011). Here, the record on appeal was supplemented with a report from the Illinois State Police Division of Forensic Services that indicated that defendant submitted a DNA sample prior to his release from prison for a 1999 conviction. Therefore, the fee was improperly imposed.

¶ 16

CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed in part and vacated in part.

¶ 18 Affirmed in part and vacated in part.