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2013 IL App (3d) 120184-U

Order filed October 9, 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 10th Judicial Circuit,
Plaintiff-Appellee,) Peoria County, Illinois,
)
v.)
) No. 09-CF-1423
RODNEY BRAZELTON,)
) Honorable
Defendant-Appellant.) Timothy M. Lucas,
) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Wright and Justice Carter concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The defendant is entitled to a \$15 credit toward his fines for time spent in pretrial custody; (2) the \$200 DNA analysis fee is vacated because the defendant had a DNA sample on file at the time of sentencing.
- ¶ 2 Pursuant to a partially negotiated plea agreement, the defendant, Rodney Brazelton, pled guilty to unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2008)). He was sentenced to three years of imprisonment. On appeal, the defendant argues that: (1) he is entitled to three days of \$5 *per diem* credit toward his fines for time spent in presentencing custody; and (2)

the portion of the trial court's sentencing order requiring him to submit a deoxyribonucleic acid (DNA) sample and pay a \$200 DNA analysis fee should be vacated because his DNA sample was on file at the time of sentencing. We grant the defendant \$15 of credit toward his fines and vacate the portion of the judgment ordering him to pay the \$200 DNA analysis fee.

¶ 3

FACTS

¶ 4 The record shows that on November 25, 2009, the defendant was placed under arrest and taken into police custody. On November 27, 2009, he was released from custody. On September 12, 2011, the defendant entered a partially negotiated guilty plea to possession of a controlled substance. The defendant filed a motion to withdraw guilty plea, which was denied.

¶ 5 The defendant was sentenced to three years of imprisonment and ordered to pay \$2,575.50 in fines, fees and costs, which included a \$200 DNA assessment.

¶ 6 The defendant appealed.

¶ 7

ANALYSIS

¶ 8

I. \$5-per-day Credit

¶ 9 On appeal, the defendant argues that he was entitled to \$15 of credit against his fines for the three days spent in presentencing custody. The State concedes this issue.

¶ 10 Section 110-14 of the Code of Criminal Procedure of 1963 provides that any person who is incarcerated on a bailable offense and does not post bail is entitled to a credit of \$5 for each day spent in presentence custody against his fines. 725 ILCS 5/110-14(a) (West 2008). In reviewing the defendant's fines, fees, and costs, it appears the defendant was ordered to pay a \$500 drug assessment pursuant to section 411.2(a)(4) of the Illinois Controlled Substance Act (Act). 720 ILCS 570/411.2(a)(4) (West 2008). A controlled substance assessment imposed pursuant to section 411.2

of the Act is a fine, to which defendants are entitled to apply the \$5-per-day credit. *People Jones*, 375 Ill. App. 3d 289 (2007). The defendant spent three days in presentence custody, which entitles him to a monetary credit of \$15 against his fine. 725 ILCS 5/110-14(a) (West 2008).

¶ 11 II. \$200 DNA Analysis Fee

¶ 12 The defendant additionally argues that the \$200 DNA analysis fee should be vacated because he had a DNA sample on file at the time of sentencing. Under section 5-4-3(a) of the Unified Code of Corrections, a person convicted of a felony shall be required "to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police." 730 ILCS 5/5-4-3(a) (West 2008). If such a person is required to submit a DNA sample, they are also required to pay an analysis fee of \$200. 730 ILCS 5/5-4-3(j) (West 2008). A trial court is authorized in ordering a DNA analysis and assessing a DNA analysis fee only when the defendant is not currently registered in the DNA database. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 13 In the appendix to the defendant's reply brief, the defendant included an Illinois State Police DNA submission and analysis report indicating that the defendant's DNA had previously been collected in 2003. Therefore, the \$200 DNA fee was not authorized because the defendant's DNA was registered at the time of sentencing. Consequently, we vacate the \$200 DNA analysis fee.

¶ 14 CONCLUSION

¶ 15 Accordingly, we affirm the judgment of the circuit court of Peoria County as modified to a reflect a \$15 credit toward the defendant's fines, and we vacate the \$200 DNA analysis fee.

¶ 16 Affirmed in part as modified and vacated in part.