SECOND DIVISION
September 1, 2015

No. 1-13-3187

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 17946
	)	
EDWARD HUTSON,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Neville concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Mittimus corrected to reflect the MSR term imposed by the court; $250 DNA fee vacated; $2 Public Defender and $2 State's Attorney assessments are fees and thus there is no *ex post facto* violation; judgment affirmed in all other respects.

¶ 2 Following a jury trial, defendant Edward Hutson was convicted of aggravated domestic battery and sentenced to 20 years' imprisonment. On appeal, defendant does not contest the sufficiency of the evidence to sustain his conviction, but requests that his mittimus be corrected to properly reflect that he is subject to a four-year term of mandatory supervised release (MSR).

He also requests this court to vacate the $250 DNA fee, the $2 Public Defender fee, and the $2 State's Attorney fee imposed by the court.

¶ 3 Defendant was convicted on evidence showing that on September 25, 2011, he asked his then-girlfriend, Deborah Swearengen, to have sex with him and she declined. A short while later, defendant took an umbrella, and hit her over the head with it several times. When the handle of the umbrella broke off, he used the broken end to stab her several times. Swearengen fled the house and went to the hospital where she received staples to the back of her head. Defendant admitted to police that he hit Swearengen in the head with an umbrella. Defendant was sentenced to 20 years' imprisonment on his conviction, followed by a four-year term of MSR.

¶ 4 On appeal, defendant first contends and the State agrees that his mittimus should be corrected to reflect a four-year term of MSR. The record shows that the trial court sentenced defendant to four years of MSR, which is the statutorily required term for aggravated domestic battery. 730 ILCS 5/5-8-1(d)(6) (West 2012). However, the mittimus incorrectly reflects that the term of MSR is "4 YEARS MSR TO NATURAL LIFE." Accordingly, we direct that defendant's mittimus be corrected to reflect the trial court's judgment that defendant serve "four years of MSR," by removing the reference, "to natural life." *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 5 Defendant next contends that the $250 DNA fee imposed by the court should be vacated because he has prior, post 1998 convictions and his DNA is already in the State database. Based on the supreme court's decision in *People v. Marshall*, 242 Ill. 2d 285, 297, 303 (2011), the State agrees since a DNA analysis fee is authorized only where defendant is not currently registered in

the DNA database. Pursuant to our authority under Supreme Court Rule 615(b)(2) (eff. April 1, 2015), we therefore vacate the $250 DNA assessment, and direct that the trial court's fines and fees order be modified to that effect.

¶ 6 Defendant finally contends that this court should vacate the $2 Public Defender fee and the $2 State's Attorney fee. He maintains that these are fines, not fees, and because the effective date for the Pub. Act 97-673, § 5, which provided for these fees was June 1, 2012, a date which was after he committed the offense, their imposition violates *ex post facto* principles.

¶ 7 The State contends that this issue was recently considered and decided adversely to defendant in *People v. Rogers*, 2014 IL App (4th) 121088, ¶30. In that case, the Fourth District found that the State's Attorney fee was compensatory in nature because it is intended to reimburse the State's Attorneys for their expenses related to automated record-keeping systems, and, accordingly, it is a fee, and there is no *ex post facto* violation. *Rogers*, 2014 IL App (4th) 121088, ¶30. We find *Rogers* persuasive and dispositive of the issue at bar since the pertinent language in the statute for the Public Defender fee (55 ILCS 5/3-4012 (West 2012)) is identical to the language of the statute for the State's Attorney fee (55 ILCS 5/4-2002.1(c) (West 2012)) at issue in *Rogers*, the only difference being the entity for which it is collected. Accordingly, we find that it is a fee imposed by the court.

¶ 8 In sum, we correct the mittimus as indicated, vacate the $250 DNA Fee, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 9 Affirmed in part; vacated in part; mittimus corrected.