2018 IL App (4th) 160339-U

No. 4-16-0339

FILED
March 12, 2018
Carla Bender
4th District Appellate
Court, IL

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
DERRICK D. BOGAN,	)	No. 15CF508
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part and vacated in part, concluding (1) defendant failed to rebut the presumption the trial court consider the pertinent statutory sentencing factors in mitigation, and (2) the circuit clerk improperly assessed a $250 DNA analysis fee where defendant had previously submitted a DNA specimen.

¶ 2 In June 2015, defendant, Derrick D. Bogan, pleaded guilty to retail theft with a prior retail theft conviction (720 ILCS 5/16-25(a)(1) (West 2014)). In August 2015, the trial court sentenced defendant to five years' imprisonment. Defendant filed a motion to reconsider his sentence, which the court denied.

¶ 3 Defendant appeals, arguing this court should either (1) vacate his sentence and remand for resentencing because the trial court failed to consider pertinent statutory sentencing factors in mitigation, or (2) vacate a $250 deoxyriboneucleic acid (DNA) analysis fee assessed

against him because his DNA was previously collected. We affirm in part and vacate in part.

¶ 4 I. BACKGROUND

¶ 5 A. Information

¶ 6 In April 2015, the State charged defendant by information with retail theft with a prior retail theft conviction (720 ILCS 5/16-25(a)(1) (West 2014)).

¶ 7 B. Plea Hearing

¶ 8 In June 2015, the trial court held a plea hearing. The State informed the court it had reached a plea agreement with defendant. The State indicated the agreement provided defendant would plead guilty to the charged offense in exchange for it not objecting to defendant's participation in drug court. However, the State noted:

> "And to keep the record clear, [defendant] does have a significant prior record. It is not a part of this agreement that [defendant] would be guaranteed as eligible for either [Treatment Alternative for Safe Communities (TASC) probation] or drug court. That eligibility still remains to be seen."

The State also noted on the date of sentencing defendant would be terminated unsuccessfully from a term of probation he was serving in Champaign County case No. 14-CF-1652 for retail theft with a prior burglary conviction. Defendant, through counsel, indicated he was in agreement with the terms of the plea agreement as described by the State.

¶ 9 As a factual basis for the plea, the State indicated the evidence would show, on April 12, 2015, loss prevention staff at a Wal-Mart observed defendant and another male place items in a shopping cart and then proceed past the last point of sale without paying for the items.

Loss prevention staff then approached defendant and the other male and identified themselves, which caused the men to flee. Defendant was later apprehended exiting a nearby ditch. The value of the merchandise taken totaled $273.38 and included a nail gun, stereo, and cologne. Incident to arrest, defendant was found to be in possession of "two white or pink capsules, a small silver tin containing a powdery substance that field tested positive as cocaine, and a corner [Baggie] of suspected crack cocaine." The evidence would further show defendant had previously been convicted of retail theft. Defendant, through counsel, indicated he was in agreement with the factual basis.

¶ 10 The trial court admonished defendant as to his rights, the charge against him, and the possible penalties for the offense. Defendant indicated he understood his rights, he desired to plead guilty, and his guilty plea was voluntary and entered at his own free will. Defendant entered a written waiver of his right to a jury trial. The court accepted defendant's guilty plea and ordered a TASC suitability report and a presentence investigation report be completed.

¶ 11 C. Sentencing Hearing

¶ 12 In August 2015, the trial court held a sentencing hearing. The court indicated it "received and considered" a presentence investigation report and a TASC suitability report.

¶ 13 The presentence investigation report indicated defendant had been convicted of 14 criminal offenses between 1987 and 2015. Those offenses included burglary, manufacture/delivery of a controlled substance, unlawful possession of a stolen vehicle, possession of a controlled substance, aggravated possession of a stolen vehicle, armed robbery, aggravated unlawful use of a weapon, driving on a suspended license, and retail theft with a prior burglary conviction. Defendant reported drug use was a major problem in his life. He indicated

he used heroin daily and had used cocaine and cannabis in the past. Defendant reported using illegal substances while serving periods of imprisonment. He was adamant the instant offense had nothing to do with substance abuse as he had not relapsed. Defendant reported he resided with his fiancée, with whom he had been in a relationship for three years, and their then five-month-old daughter. He worked full time, enjoyed his job, and provided financial support for his family. Defendant earned his general equivalency diploma and various associate's degrees while serving periods of imprisonment. He also obtained some vocational training. Defendant noted he had two surgeries for carpel tunnel after his January 2013 release from prison. The presentence investigation report noted defendant's DNA was collected in October 2003.

¶ 14 A probation adjustment letter from Champaign County case No. 14-CF-1652 was attached to the presentence investigation report. The letter provided, on March 2, 2015, defendant was placed on probation. Thereafter, in violation of the terms of probation, defendant missed appointments, committed the instant offense, and tested positive for opiates and cocaine on March 9, 2015, and July 13, 2015. The probation adjustment letter noted defendant's DNA was previously collected in October 2003.

¶ 15 The TASC suitability report concluded defendant was ineligible for TASC probation and drug court due to his prior convictions for armed robbery. The report further noted (1) defendant appeared to be a high violence risk given his convictions for armed robbery; (2) defendant reported he was snorting heroin daily and snorting cocaine about three times per month; (3) defendant met the criteria of the Diagnostic and Statistical Manual of the American Psychiatric Association for opioid and cocaine dependency; (4) defendant's substance use predated his involvement in the criminal justice system; and (5) defendant reported he supported

his substance use with his criminal activities.

¶ 16 As to recommendations, the State initially noted, after reviewing the presentence investigation report, it agreed with the conclusion from the TASC suitability report indicating defendant was ineligible for TASC probation or drug court. The State then recommended a sentence of five years' imprisonment. In support of its recommendation, the State cited defendant's extensive criminal history. The State acknowledged "[m]ost of [defendant's criminal history was] older." However, the State noted, since his January 2013 release on mandatory supervised release (MSR), defendant (1) was arrested on two separate felony charges of retail theft; (2) was convicted of the first retail theft charge and sentenced to probation; and (3) violated the terms of his probation by not reporting for services, testing positive for illegal substances, and committing the instant offense. The State argued defendant's "performance on probation already indicates that he has not made efforts to remain law abiding when given that second chance, when given a chance on probation while already on [MSR]."

¶ 17 Defense counsel recommended a community-based sentence—"given the non-violent nature of the offense, we don't believe that a sentence [of imprisonment] would be appropriate." Counsel acknowledged defendant's extensive criminal history. However, counsel argued, defendant's criminal activities slowed since his January 2013 release on MSR. Counsel also suggested defendant's age, then 45 years old, was a substantial deterrent factor. Counsel argued the offense was nonviolent in nature—"[h]e loaded up a shopping cart with another individual and they pushed the cart past all points of purchase." Counsel further noted defendant had obtained full-time employment and a stable living situation, started a family, earned his general equivalency diploma as well as various associate's degrees, obtained vocational training,

and was a caretaker of his very young daughter. Counsel highlighted defendant's substance abuse problems, noting defendant indicated he used heroin on a daily basis for substantial periods of time and relapsed after being prescribed opiates for a surgery. Counsel argued defendant's failure to report on probation and the commission of the prior and instant retail theft offenses were a direct result of his substance abuse. Counsel further argued imprisonment would not deter defendant's use of illegal substances because, by defendant's account, he continued to use during prior periods of imprisonment.

¶ 18 Defendant provided a statement in allocution. He stated he relapsed after taking medication for a surgery. Defendant indicated he "tried to find treatment to be able to separate the medication and the use of heroin," and "[i]t's hard but it's working a little bit." Defendant also stated he worked to provide for his fiancée and daughter, noting his fiancée had been unable to work due to labor complications. Defendant acknowledged his extensive criminal history but asserted he was changing his life to care for his family.

¶ 19 In the oral pronouncement of its decision, the trial court indicated, in addition to the presentence investigation report and the TASC suitability report, it considered the comments of counsel and defendant. The court also stated it "considered the statutory factors in aggravation, as well as [the] statutory factors in mitigation."

¶ 20 As to factors in mitigation, the trial court noted "[t]here really aren't any statutory mitigating factors that apply to this [d]efendant, to this type of an offense." The court found various nonstatutory factors in mitigation existed, including the fact defendant (1) pleaded guilty, (2) utilized his time while imprisoned to obtain an education, and (3) was employed.

¶ 21 As to factors in aggravation, the trial court found defendant had an extensive

criminal history. The court noted defendant had multiple felony convictions, including those for armed robbery and unlawful use of a weapon. While the court found a need for deterrence existed, it acknowledged the "deterrent factor becomes somewhat problematical when you're dealing with someone who has to steal to support his or her habit."

¶ 22 The trial court considered a community-based sentence. The court considered the "history, character[,] and condition" of defendant. The court noted defendant was 45 years old, employed, and served numerous periods of his life imprisoned. The court found the circumstances surrounding the offense "would indicate very likely, although there's no guarantee given his criminal history, that he's maybe at this point unlikely to commit any further crimes of violence." The court found, however, a community-based sentence would deprecate the seriousness of defendant's conduct and be inconsistent with the ends of justice. In support of its finding, the court noted, five weeks after being placed on probation for committing a retail theft offense and agreeing to a substance abuse evaluation and to follow treatment recommendations, defendant committed the instant retail theft offense. The court concluded the record did not show defendant was serious about addressing his addiction.

¶ 23 The trial court sentenced defendant to five years' imprisonment. The court also ordered defendant to submit specimens of blood, saliva, or tissue to the Illinois State Police, unless he had previously done so. The court admonished defendant of his right to appeal. The court admonished defendant, in part, as to the need to file "a written motion asking to have this [c]ourt either reconsider the sentence imposed this date or to have the judgment vacated and for leave to withdraw your guilty plea" prior to taking an appeal.

¶ 24 A circuit clerk's payment information printout indicates the circuit clerk assessed

a $250 DNA analysis fee against defendant. The record on appeal was supplemented with a printout from the Illinois State Police, Division of Forensic Services, which shows defendant submitted a blood sample for DNA analysis in October 2003.

¶ 25 D. Motion To Reduce the Sentence

¶ 26 In September 2015, defendant filed a *pro se* motion to reduce his sentence. Defendant argued his sentence was excessive and the trial court failed to take into account his rehabilitative potential. That same month, the trial court entered the following docket entry: "Defendant's Motion for Reduction of Sentence is not in accordance with [Illinois] Supreme Court Rule 604(d) [(eff. Feb. 6, 2013)]." Defendant appealed.

¶ 27 E. Agreed Motion for Summary Remand

¶ 28 In April 2016, this court granted defendant's agreed motion for summary remand for compliance with Rule 604(d).

¶ 29 F. Motion To Reconsider the Sentence

¶ 30 In May 2016, defendant, through appointed counsel on remand, filed a motion to reconsider his sentence. Defendant argued (1) his sentence was excessive, (2) the trial court "gave inadequate consideration to [his] potential for rehabilitation and lack of violent history as mitigating factors," and (3) his plea was not voluntary as his counsel did not inform him prior to entering his plea he was ineligible for TASC probation or drug court. As to alleged failure to give adequate consideration to his potential for rehabilitation and lack of violent history as factors in mitigation, defendant specifically noted, in part, "[t]he offense for which [he] was convicted is nonviolent in nature."

¶ 31 Following a hearing that same month, the trial court denied defendant's motion to

reconsider his sentence. In doing so, the court acknowledged (1) defendant struggled with addiction and was actively engaged in treatment, (2) "the offense was not a violent offense," and (3) it was not concerned with defendant being dangerous. The court found, however, the sentence was appropriate given defendant's extensive criminal history.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 On appeal, defendant argues this court should either (1) vacate his sentence and remand for resentencing because the trial court failed to consider pertinent statutory sentencing factors in mitigation, or (2) vacate the $250 DNA analysis fee assessed against him because his DNA was previously collected.

¶ 35 A. Defendant's Plea

¶ 36 As an initial matter, the parties dispute what impact, if any, the prosecution's plea concession has on defendant's challenge to his sentence.

¶ 37 Defendant argues the prosecution's concession not to object to his participation in drug court does not bar him from challenging his sentence for any of the following reasons: (1) the concession was illusory as he was ineligible for drug court as a matter of law; (2) the prosecution violated the agreement by taking the position at sentencing he was ineligible for participation in drug court; or (3) the argument a court failed to consider a relevant statutory factor in mitigation fits within the exception this court recognized in *People v. Palmer-Smith*, 2015 IL App (4th) 130451, 29 N.E.3d 95, for arguments based on improper sentencing rather than excessive sentencing.

¶ 38 The State argues the prosecution's concession created a negotiated guilty plea, which bars defendant from challenging his sentence on appeal because he did not move to withdraw his plea as required by Rule 604(d). In response to defendant's specific arguments, the State contends (1) the plea agreement was not illusory as it did not extend to the subject of eligibility for drug court; (2) the prosecution did not violate its concession by commenting at sentencing on defendant's eligibility for drug court because its concession did not extend to such eligibility; and (3) *Palmer-Smith* is contrary to the plain language of Rule 604(d), as interpreted by *People v. Evans*, 174 Ill. 2d 320, 673 N.E.2d 244 (1996), and Illinois Supreme Court Rule 605(c) (eff. Oct. 1, 2001), as discussed by *People v. Dunn*, 342 Ill. App. 3d 872, 795 N.E.2d 799 (2003).

¶ 39 Following the briefing in this case, we issued a decision in *People v. Johnson*, 2017 IL App (4th) 160920, 81 N.E.3d 1073. In that case, the State—as it does in the present case—invited us to depart from a line of cases from this court—including *Palmer-Smith*—holding a defendant need not withdraw his or her negotiated guilty plea to challenge a sentence on the basis the trial court relied on improper sentencing factors. *Id.* ¶¶ 24-25, 41; see *People v. Catron*, 285 Ill. App. 3d 36, 674 N.E.2d 141 (1996); *People v. Economy*, 291 Ill. App. 3d 212, 683 N.E.2d 919 (1997); *Palmer-Smith*, 2015 IL App (4th) 130451. We declined the State's invitation and held a defendant was not foreclosed from asserting an improper-sentence argument absent a withdrawal of his or her negotiated guilty plea. *Johnson*, 2017 IL App (4th) 160920, ¶ 30. As a matter of policy, we noted, where a defendant "merely seeks a fair sentencing, requiring the plea to be withdrawn and the parties returned to the *status quo* would be an unnecessary waste of time and resources, given neither party seeks to change the terms of

the plea agreement." (Emphasis in original.) *Id.* ¶ 37. For the same reasons addressed in *Johnson*, we continue to decline the State's invitation to depart from our holdings in *Palmer-Smith* and the related cases.

¶ 40 It is noteworthy, however, in *Johnson* and the related cases from this court the defendants challenged their sentences on the basis the trial court relied on improper sentencing factors as opposed to a challenge on the basis the court failed to consider relevant statutory factors in mitigation. See *Id.* ¶ 9; *Catron*, 285 Ill. App. 3d at 37; *Economy*, 291 Ill. App. 3d at 219, *Palmer-Smith*, 2015 IL App (4th) 130451, ¶ 28. In his initial brief, defendant acknowledged this distinction but asserted a trial court's failure to consider relevant statutory factors in mitigation presented similar concerns to those presented where a trial court relies on improper sentencing factors. The State did not address defendant's argument. Absent any argument to the contrary, the failure to consider relevant statutory factors in mitigation will be construed as a claim for improper sentencing subject to review without the need to withdraw a negotiated guilty plea. See *Johnson*, 2017 IL App (4th) 160920, ¶ 35 ("[A]fter the State and the defendant have performed their duties under the [plea] agreement, the trial court *** must fashion an appropriate sentence based upon counsels' recommendations and the statutory sentencing factors."); *People v. Hernandez*, 204 Ill. App. 3d 732, 740, 562 N.E.2d 219, 225 (1990) ("As long as the [trial] court does not consider incompetent evidence, improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the statutory range prescribed for the offense.").

¶ 41 In a related argument, the State contends, citing *People v. Foster*, 171 Ill. 2d 469, 665 N.E.2d 823 (1996), the trial court's failure to admonish defendant under Rule 605(c) as to

the need to file a motion to withdraw his negotiated plea under Rule 604(d) requires this court to remand the matter. Defendant disagrees, maintaining *Foster* does not apply to the particular circumstances of this case as it is both contrary to the reasoning of our decision in *Palmer-Smith* and factually distinguishable.

¶ 42 In *Foster*, the appellate court dismissed the defendant's appeal of his sentence, ruling it could not consider the appropriateness of the sentence where defendant failed to comply with the written-motion requirement of Rule 604(d). *Id.* at 470. The supreme court granted defendant's petition for leave to appeal to determine whether the appellate court's dismissal was proper in light of the trial court's failure to issue Rule 605(b) admonitions. *Id.* The supreme court held, "where a trial court has failed to issue Rule 605(b) admonitions, the appellate court may entertain an appeal from a sentence despite defendant's noncompliance with the written-motion requirement of Rule 604(d)." *Id.* at 473. To hold otherwise, the supreme court found, would violate a defendant's procedural due process rights given the ramifications of noncompliance. *Id.* When entertaining an appeal under such circumstances, the supreme court further held, "the appellate court has no discretion and must remand for strict compliance [with Rule 604(d)]." *Id.* at 474.

¶ 43 Again, under *Johnson* and the related cases, a defendant is not foreclosed from asserting an improper-sentence argument absent a withdrawal of his or her negotiated guilty plea. *Johnson*, 2017 IL App (4th) 160920, ¶ 30. Accordingly, unlike *Foster*, a defendant asserting an improper-sentence argument does not face any ramifications for failing to withdrawal of his or her negotiated guilty plea. Moreover, in the present case the trial court admonished defendant, prior to taking an appeal, he was required to file a written motion asking the court to either (1)

reconsider the sentence imposed, or (2) allow leave to withdraw the guilty plea. Under Rule 605(c), the trial court would have only admonished defendant of the need to file a motion asking the court to allow leave to withdraw the negotiated guilty plea. See *Id.* ¶ 41 (noting the omission of any admonition in Rule 605(c) relating to a motion to reconsider the sentence created "the anomalous situation where a trial court, which strictly complies with Rule 605(c), does not admonish a defendant with respect to his right to file a motion to reconsider his sentence in a case where he does not seek to challenge his sentence as merely excessive"). Given our holdings in *Johnson* and the related cases, we reject the State's argument suggesting *Foster* mandates we remand the matter.

¶ 44 We hold, even if defendant's plea was negotiated and the State did not violated the terms of the plea agreement, defendant's challenge to his sentence based on an allegation of improper sentencing is properly before this court.

¶ 45 B. Statutory Sentencing Factors in Mitigation

¶ 46 Defendant argues this court should vacate his sentence and remand for resentencing because the trial court failed to consider pertinent statutory sentencing factors in mitigation. Specifically, defendant contends the trial court failed to either (1) "weigh" those statutory factors in mitigation relating to non-violent offenses (730 ILCS 5/5-5-3.1(a)(1), (a)(2) (West 2014)), or (2) "discuss" the fact his imprisonment would entail an excessive hardship to his family (730 ILCS 5/5-5-3.1 (a)(11) (West 2014)). In support, defendant cites the court's comments at sentencing indicating "[t]here really aren't any statutory mitigating factors that apply to this [d]efendant, to this type of an offense."

¶ 47 It is well established "[a] trial court has wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation." *People v. Roberts*, 338 Ill. App. 3d 245, 251, 788 N.E.2d 782, 788 (2003). It is the trial court's duty "to balance relevant factors and make a reasoned decision as to the appropriate punishment in each case." *People v. Latona*, 184 Ill. 2d 260, 272, 703 N.E.2d 901, 908 (1998). "The failure of a court to consider applicable statutory factors in mitigation of a defendant's sentence can result in a vacatur of the sentence and the cause being remanded for resentencing." *People v. Sanders*, 198 Ill. App. 3d 178, 189, 555 N.E.2d 812, 819-20 (1990).

¶ 48 A trial court's recitation of statutory factors in aggravation and mitigation eliminates speculation regarding the basis of its sentencing decision and better enables a reviewing court to determine if the sentence was proper. *People v. McDonald*, 322 Ill. App. 3d 244, 250-51, 749 N.E.2d 1066, 1072 (2001). However, the trial court is not required to recite each factor. *Id.* at 251. In fact, when mitigating evidence is before the court, it is presumed the court considered it. *Id.* "[T]hat presumption will not be overcome without explicit evidence from the record that the *** court did not consider mitigating factors." *People v. Flores*, 404 Ill. App. 3d 155, 157-58, 935 N.E.2d 1151, 1154-55 (2010). Further, where a court articulates factors in aggravation, a court of review may assume factors in mitigation were properly considered as well. *People v. Laliberte*, 246 Ill. App. 3d 159, 178, 615 N.E.2d 813, 826 (1993).

¶ 49 The presentence investigation report indicated defendant provided financial support for his family. Defense counsel recommended a community based sentence in part because defendant was a caretaker of his daughter. In his statement of allocution, defendant stated he worked to provide for his fiancée and daughter.

¶ 50 The trial court judge heard and accepted the factual basis for defendant's plea. Defense counsel recommended a community based sentence in part because the offense was nonviolent in nature—"[h]e loaded up a shopping cart with another individual and they pushed the cart past all points of purchase."

¶ 51 The trial court indicated it considered the presentence investigation report, the TASC suitability report, the comments of counsel, the comments of defendant, and "the statutory factors in aggravation, as well as [the] statutory factors in mitigation." The court noted "[t]here really aren't any statutory mitigating factors that apply to this [d]efendant, to this type of an offense." The court found various non-statutory factors in mitigation existed, including the fact defendant (1) pleaded guilty, (2) utilized his time while imprisoned to obtain an education, and (3) was employed. The court found both defendant's criminal history and the need for deterrence were factors in aggravation. The court further considered defendant's history, character, and condition in evaluating whether a community based sentence was appropriate.

¶ 52 In his motion to reconsider his sentence, defendant argued, in part, the trial court gave "inadequate consideration" to the fact the offense for which he was convicted was nonviolent in nature. At a hearing on defendant's motion to reconsider, the court acknowledged the offense for which defendant was convicted was nonviolent in nature but found the sentence was appropriate given his extensive criminal history.

¶ 53 Contrary to defendant's argument, we find the record does not rebut the presumption the trial court considered the relevant factors in mitigation. The trial court explicitly stated it considered "the statutory factors in aggravation, as well as [the] statutory factors in mitigation." Evidence relating to the factors in mitigation was before the court through the

presentence investigation report and defense counsel's recommendation, and, on the motion to reconsider, the court explicitly noted the offense was nonviolent in nature. See *People v. Gramo*, 251 Ill. App. 3d 958, 971-72, 623 N.E.2d 926, 936 (1993) (rejecting the defendant's claim the trial court failed to give weight to those statutory factors in mitigation relating to non-violent offenses where the court explicitly noted the offenses did not involve violence). In context, we find the court's comments at sentencing indicating "[t]here really aren't any statutory mitigating factors that apply to this [d]efendant, to this type of an offense" neither definitively show the court failed to consider the factors in mitigation nor rebuts the applicable presumption. See *Sanders*, 198 Ill. App. 3d at 189 (concluding the court's comments at sentencing indicating it was "difficult to find mitigating factors that would favor" the defendant did not definitively state the court found no mitigating factors were applicable and thus did not show a complete failure by the court to consider the relevant mitigating factors). We thus presume the court considered all relevant statutory factors in mitigation when sentencing defendant.

¶ 54 C. $250 DNA Analysis Fee

¶ 55 Defendant argues this court should vacate the $250 DNA analysis fee assessed against him because his DNA was previously collected. The State does not dispute the fee was improperly assessed but asserts this court may not vacate the fee because the matter must be remanded for strict compliance with Rule 604(d). For the reasons previously addressed, we reject the State's argument.

¶ 56 Section 5-4-3(a) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4-3(a) (West 2014)) requires any person convicted of a felony to submit specimens of blood, saliva, or tissue to the Illinois State Police to be analyzed and catalogued in a database. Under

section 5-4-3(j) of the Unified Code (730 ILCS 5/5-4-3(j) (West 2014)), the person providing the specimen is required to pay a DNA analysis fee of $250. Our supreme court has held the fee can be assessed only once against an individual and cannot be assessed against a defendant whose genetic specimen is already in the database as a result of a prior conviction. *People v. Marshall*, 242 Ill. 2d 285, 303, 950 N.E.2d 668, 679 (2011).

¶ 57 The trial court properly conditioned the imposition of the DNA analysis fee on whether defendant had previously submitted a specimen for testing. The circuit clerk's payment information printout indicates the circuit clerk assessed a $250 DNA analysis fee against defendant. The record on appeal was supplemented with a printout from the Illinois State Police, Division of Forensic Services, which shows defendant submitted a blood sample for DNA analysis in October 2003. The presentence investigation report and the probation adjustment letter further confirm defendant submitted his DNA sample in October 2003. Because the record shows defendant submitted a DNA sample for analysis in 2003, the circuit clerk had no authority to assess the DNA analysis fee. *Id.* at 302. We vacate the $250 DNA analysis fee imposed by the circuit clerk.

¶ 58 III. CONCLUSION

¶ 59 We affirm the trial court's judgment but vacate the $250 DNA analysis fee assessed against defendant.

¶ 60 Affirmed in part and vacated in part.