

No. 1-09-3052

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).

SECOND DIVISION
Modified Order
Filed June 21, 2011

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. 07 CR 2109
)	
MATTHEW WOJTASZEK,)	Honorable
)	Colleen McSweeney-Moore,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Karnezis and Harris concurred in the judgment.

O R D E R

Held: Summary dismissal of post-conviction petition affirmed where defendant's claim that he was not admonished that his sentence under a negotiated plea agreement included a MSR term had no arguable basis in law or in fact; court system fee found inapplicable and vacated.

Defendant Matthew Wojtaszek appeals the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2008). He contends that the circuit court erred in dismissing his petition at the

first stage of proceedings where the trial court failed to admonish him that his sentence under a negotiated plea agreement included a 3-year term of mandatory supervised release (MSR). He also contests certain pecuniary penalties imposed by the court at sentencing.

The record shows, in relevant part, that on February 7, 2007, defendant entered a negotiated plea of guilty to armed robbery in exchange for six years' imprisonment. The court entered judgment accordingly, and assessed defendant fines and fees totaling \$520. Defendant did not file a motion to vacate his guilty plea or attempt to perfect a direct appeal from it.

On August 10, 2009, defendant filed a *pro se* petition for post-conviction relief alleging a violation of his right to due process in that the trial court failed to admonish him that the sentence imposed pursuant to his negotiated plea agreement included a term of MSR. On October 9, 2009, the circuit court summarily dismissed defendant's petition as frivolous and patently without merit.

In this appeal from that dismissal, defendant first contends that he was not admonished that the sentence imposed under his negotiated guilty plea included a term of MSR. However, defendant withdrew this argument in his reply brief, conceding that this issue is moot because he has been released from prison and discharged from his MSR. We agree under these circumstances,

that this court cannot provide defendant any effectual relief (*People v. Roberson*, 212 Ill. 2d 430, 435 (2004)), and, thus, no further review of the issue is warranted.

Defendant next challenges the calculation and assessment of certain of the pecuniary penalties imposed by the court. The State responds that defendant has forfeited these claims by failing to raise them in the circuit court. This court has recognized, however, that a sentencing error may affect defendant's substantial rights, and thus can be reviewed for plain error. *People v. Black*, 394 Ill. App. 3d 935, 939 (2009), citing *People v. Hicks*, 181 Ill. 2d 541, 544-45 (1998). The propriety of court-ordered fines and fees raises a question of statutory interpretation, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

Defendant first contends that he was improperly assessed a \$200 DNA analysis fee because the Illinois State Police already had his DNA profile from a prior felony conviction. This issue is controlled by the supreme court's recent decision in *People v. Marshall*, No. 110765 (Ill. May 19, 2011). In *Marshall*, the supreme court held that section 5-4-3 authorizes a trial court to order the taking, analysis and indexing of a qualifying offender's DNA, and the payment of the analysis fee only where that defendant is not currently registered in the DNA database. *Marshall*, slip op. at 15. Because defendant in this case has

already submitted DNA and paid the fee following previous convictions, the trial court's order imposing the \$200 DNA analysis fee is void. Although the State argues that defendant has forfeited this issue by failing to raise it before the trial court in a postsentencing motion, a challenge to a void order is not subject to forfeiture. *Id.*, slip op. at 14.

Defendant next contests the assessment of the \$5 court system fee, and the State concedes that the assessment was improper in this case. We agree that the court system fee does not apply because defendant was convicted of armed robbery, a violation of the Criminal Code of 1961, and not a violation of the Illinois Vehicle Code or of a similar county or municipal ordinance (55 ILCS 5/5-1101(a) (West 2006)), to which the fee is directed. We therefore vacate the \$5 court system fee.

Defendant finally contends that he was improperly assessed a \$15 court services fee, claiming that the statute only authorizes assessment of the fee under certain criminal statutes, none of which include the offense of armed robbery. The State responds that the statute authorizes assessment of the fee in all criminal cases resulting in a judgment of conviction.

Under the Counties Code (55 ILCS 5/5-1103 (West 2006)), the court may assess a \$15 court services fee against a defendant upon a plea of guilty resulting in a judgment of conviction, or for an order of supervision or probation without entry of

judgment made under specific enumerated criminal provisions. *Williams*, 405 Ill. App. 3d at 965. In this case, a judgment of conviction was entered against defendant, which, alone, made him eligible for the court services fee. *Williams*, 405 Ill. App. 3d at 965. We thus find that the trial court did not err in assessing him a \$15 court services fee.

Accordingly, we vacate the \$200 DNA analysis fee and the \$5 court system fee. We order the clerk to modify the fines and fees order to that effect, and affirm the judgment in all other respects.

Affirmed, as modified.