2012 IL App (1st) 103292-U

THIRD DIVISION
May 16, 2012

Nos. 1-10-3292; 1-11-0246

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. 09 CR 11668
	)	
ANTHONY CHICO,	)	Honorable
	)	William Timothy O'Brien,
Defendant-Appellant.	)	Judge Presiding.
	)	

JUSTICE SALONE delivered the judgment of the court.
Justices Neville and Murphy concurred in the judgment.

ORDER

HELD: Where section 24–1.7 of the Criminal Code, the armed habitual criminal statute, violates neither the second amendment right to bear arms nor the constitutional prohibitions against *ex post facto* laws, defendant's conviction and sentence for the offense of being an armed habitual criminal are affirmed as modified.

¶ 1 Defendant Anthony Chico pleaded guilty to the offense of being an armed habitual

criminal in violation of section 24–1.7 of the Criminal Code of 1961. He received a sentence of seven years' imprisonment. The circuit court denied defendant's motion to withdraw his guilty plea, as well as his motion to reconsider that denial. On appeal, defendant challenges the constitutionality of section 24–1.7. We affirm the judgment of the circuit court.

¶ 2 BACKGROUND

¶ 3 On May 22, 2009, police observed defendant drinking "from a 12-ounce glass bottle of Corona[,] an alcoholic beverage," on a public way at 3300 West Potomac Avenue in Chicago. An officer approached defendant and asked if he had any contraband on his person. Defendant replied that he had a pistol. A custodial search revealed a nickel-plated .32 caliber firearm, fully loaded with eight live rounds of ammunition. After his arrest, defendant stated he needed the weapon for protection.

¶ 4 On June 30, 2009, the State filed a seven-count information charging defendant with one count of being an armed habitual criminal in violation of section 24–1.7 (720 ILCS 5/24–1.7 (West 2008)); two counts of unlawful use of a weapon by a felon in violation of section 24–1.1 (720 ILCS 5/24–1.1 (West 2008)); and four counts of aggravated unlawful use of a weapon in violation of section 24–1.6 (720 ILCS 5/24–1.6 (West 2008)). Counsel was appointed to represent defendant. On July 17, 2009, at his arraignment, defendant was informed of all the charges against him, including the armed habitual criminal count.

¶ 5 On September 23, 2009, defendant entered a plea of guilty to the offense of being an armed habitual criminal. The parties stipulated to the factual basis for the plea, which included defendant's prior convictions for unlawful use of a weapon by a felon under case No. 07 CR 574

and residential burglary under case No. 04 CR 13595.[1] The State dismissed the remaining counts against defendant. The circuit court sentenced him to seven years' imprisonment, and imposed assessments totaling $740.

¶ 6 In October 2009 defendant timely filed a *pro se* motion to withdraw his guilty plea, alleging that (1) at the time of his arrest and probable-cause hearing, the armed habitual criminal count was not included in the charges against him, and (2) his trial counsel was ineffective in that she "misled him and misrepresented the facts of law pertaining to his case," which led him to plead guilty. The circuit court appointed new counsel to represent defendant on his motion to withdraw his guilty plea. In June 2010, defendant's new counsel filed a certificate of compliance with Supreme Court Rule 604(d) (eff. July 1, 2006), as well as an amended motion to withdraw defendant's guilty plea.

¶ 7 On October 28, 2010, the circuit court held an evidentiary hearing on the amended motion to withdraw. Defendant testified that his trial counsel failed to file various motions he requested, including a motion to suppress evidence such as "the gun the police put on me" and

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[1]Section 24–1.7 provides, in pertinent part:
"(a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:
(1) a forcible felony as defined in section 2–8 of this Code;
(2) unlawful use of a weapon by a felon ***
***
(b) Sentence. Being an armed habitual criminal is a Class X felony." 720 ILCS 5/24–1.7 (West 2008).

As noted, defendant's prior convictions were for (1) residential burglary, which is a "forcible felony" under section 2–8 (720 ILCS 5/2–8 (West 2008)), and (2) unlawful use of a weapon by a felon.

the "imaginary liquor." Defendant denied he was drinking when he was arrested, or that he had a gun or ammunition, and he stated he informed his counsel of this. Defendant also testified that his counsel coerced him to plead guilty. According to defendant, his trial counsel told him that if he went to trial, "the judge is just going to believe the police and [defendant would] get double digits," but if defendant pleaded guilty, counsel could get him "less time."

¶ 8 In her testimony at the hearing, defendant's trial counsel described several discussions she had with defendant about the case. In one such discussion, which took place on the day of arraignment (July 17, 2009), counsel read the charges to defendant and discussed the sentencing ranges for each offense. In her testimony at the hearing, counsel expressly denied telling defendant he was going to receive a double-digit sentence. Counsel testified further that she and defendant went through the police reports, which stated defendant was seen on the street drinking a Corona beer from a bottle and that he was arrested for drinking on a public way. Counsel testified that defendant told her that was true: "that he was drinking and that the police did come up and arrest him and that he did have a gun on him." Counsel added that defendant "made a statement both pre- and post-Miranda to that [e]ffect that that was his gun and he did have it." Defendant's trial counsel testified, in addition, that she discussed defendant's options with him, and they agreed to ask for a continuance so she could investigate the case. Her investigation revealed that a motion to quash arrest and suppress evidence was unlikely to succeed because defendant's gun was recovered in a custodial search and he made a statement to police admitting possession and ownership of the gun. Counsel denied that defendant asked her to file any other motions, denied making any misrepresentations to defendant, and denied that defendant ever told her he did not want to plead guilty.

¶ 9 The circuit court denied the motion to withdraw defendant's guilty plea. Defendant appealed, and the case was docketed under No. 10–3292. Defendant also filed a *pro se* motion to reconsider the denial of the motion to withdraw guilty plea, which the circuit court denied on December 20, 2010. Defendant filed a *pro se* notice of appeal, and that case was docketed under No. 11–0246. The two cases were consolidated for this appeal.

¶ 10 ANALYSIS

¶ 11 Defendant first argues that section 24–1.7, the armed habitual criminal statute, violates the right to bear arms protected by the second amendment to the United States Constitution. That amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II.

¶ 12 Defendant points to the Supreme Court decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), which held that the second amendment "conferred an *individual* right to keep and bear arms." (Emphasis added.) *Id.* at 595. At its core, the Court held, the amendment protects "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. Defendant also cites *McDonald v. City of Chicago*, 561 U.S. __ , 130 S. Ct. 3020, 3050 (2010), where a plurality of the Court held that "the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*." The second amendment right thus "is fully applicable to the States." *Id.* at __ , 130 S. Ct. at 3026. Defendant contends that, under the "new landscape" created by *Heller* and *McDonald*, "the criminalization of possession of a firearm by a felon–even one twice-convicted of certain qualifying offenses–is an unconstitutional infringement on the right to bear arms."

¶ 13 Statutory enactments are presumed constitutional, and must be construed in a manner that sustains their constitutionality, if reasonably possible. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 200 (2009). The question of whether a statute is constitutional is reviewed *de novo*. *People v. Johnson*, 225 Ill. 2d 573, 584 (2007); *Konetski*, 233 Ill. 2d at 200.

¶ 14 In his appellant's brief, defendant acknowledges that he did not raise the second amendment argument in the circuit court below. In general, the failure to raise an issue in the trial court results in the forfeiture of that issue on appeal. See *People v. McCarty*, 223 Ill. 2d 109, 122 (2006). However, defendant emphasizes that a challenge to the constitutionality of a criminal statute may be raised at any time. *People v. Wright*, 194 Ill. 2d 1, 23 (2000).

¶ 15 The State counters that defendant did more than simply fail to raise this issue in the trial court. He pleaded guilty, and thereby waived his constitutional claim. "'[A] constitutional right, like any other right of an accused, may be waived, and a voluntary plea of guilty waives all errors or irregularities that are not jurisdictional.'" *People v. Del Vecchio*, 105 Ill. 2d 414, 433 (1985), quoting *People v. Brown*, 41 Ill. 2d 503, 505 (1969). See also *People v. Townsell*, 209 Ill. 2d 543, 545 (2004) ("It is well settled that a voluntary guilty plea waives all nonjurisdictional errors or irregularities, including constitutional ones").

¶ 16 This court recently cited *Townsell* for this same point, adding:

> "'[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" *People v. Smith*, 383 Ill. App. 3d 1078, 1085 (2008),

quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973).

¶ 17 We are inclined to agree with the State that defendant waived his constitutional claim here by pleading guilty. However, we need not resolve this issue. Even if, *arguendo*, there is no waiver, defendant's second amendment challenge fails as a matter of law.

¶ 18 In *Wilson v. County of Cook*, 2012 IL 112026, our supreme court adopted a two-part second amendment analysis for determining the constitutionality of a statute. The first part inquires whether the challenged law imposes a burden on conduct falling within the scope of the second amendment guarantee. *Id*. at ¶41. If the government can establish that the challenged law regulates activity falling outside the scope of the second amendment right, then the regulated activity is categorically unprotected. *Id*. However, if the historical evidence is inconclusive or suggests that the regulated activity is not categorically unprotected, the court proceeds to the second inquiry, which examines the strength of the government's justification for restricting or regulating the exercise of second amendment rights. *Id*. at ¶ 42.

¶ 19 In the case at bar, the first question is whether section 24–1.7, the armed habitual criminal statute, imposes a burden on conduct falling within the scope of the second amendment right. In *Heller*, as previously noted, the Court held that the second amendment conferred an individual right to keep and bear arms. *Id*. at 595. However, the Court emphasized that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id*. at 626.

> "From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. *** Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing

> in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms *by felons* and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualification on the commercial sale of arms." (Emphasis added.) *Id*. at 626-27.

In a footnote, the Court stated: "We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." *Id*. at 627 n.26.

¶ 20 In *McDonald*, which held that the second amendment right was fully applicable to the States, the Court repeated *Heller*'s caveat regarding limitations on that right.

> "We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons and the mentally ill,' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.' [Citation.] We repeat those assurances here." *McDonald*, __ , 130 S. Ct. at 3047, quoting *Heller*, 554 U.S. at 626-27.

¶ 21 In the case at bar, the State interprets the language in *Heller* (and repeated in *McDonald*) regarding the possession of firearms by felons as a "blanket declaration that prohibitions on the possession of firearms by felons were constitutional under the Second Amendment." In light of this language, the State argues that the statute here, section 24–1.7, which prohibits the possession of firearms only by recidivist felons, does not impose a burden on conduct falling within the scope of the second amendment. Felons are removed from the protection of the second amendment, and the second phase of the *Wilson* analysis is unnecessary. The statute

requires no further scrutiny.

¶ 22 In response, defendant argues the language in *Heller* and *McDonald* regarding possession of firearms by felons is *dictum* which was "not intended to be given any weight." In *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010), the defendant advanced this same argument, asserting that the language in *Heller* was "merely *dicta*" and should not be given "full weight of authority." *Id.* at 771 n.6. In rejecting this argument, the court reasoned:

> "First, to the extent that this portion of *Heller* limits the Court's opinion to possession of firearms by *law-abiding* and *qualified* individuals, it is not *dicta*. [Citation.] Second, to the extent that this statement is superfluous to the central holding of *Heller*, we shall still give it considerable weight. See *Peterson v. BMI Refractories*, 124 F.3d 1386, 1392 n.4 (11th Cir. 1997) ('[D]icta from the Supreme Court is not something to be lightly cast aside')." *Rozier*, 598 F.3d at 771 n.6.

See also *United States v. Santana*, 6 F.3d 1, 9 (1st Cir. 1993) (noting that carefully considered statements of Supreme Court, even if technically *dictum*, must be accorded great weight).

¶ 23 We find this reasoning persuasive. Accordingly, even if the language at issue in *Heller* and *McDonald* is *dictum*, we nevertheless accord it considerable weight.

¶ 24 Defendant contends, as previously noted, that felons are *included* within the protection of the second amendment. Defendant thus argues, contrary to the State, that section 24–1.7, which criminalizes the possession of firearms by recidivist felons, requires further scrutiny, preferably strict scrutiny, to determine whether it violates the second amendment. Defendant points to *People v. Davis*, 408 Ill. App. 3d 747 (2011), where the State argued, similar to here, that

sections 24–1.7(a) and 24–1.1(a),[2] which apply only to felons, do not impose any burden on conduct falling within the scope of the second amendment. *Id*. at 749. In other words, felons are excluded from the protection of the second amendment, and no further scrutiny of the statutes is required. In rejecting that argument, the court noted that the second amendment expressly protects the right of the people to keep and bear arms, and stated that the defendant, although a felon, was nonetheless one of the people whose rights the constitution protected. *Id*. Accordingly, *Davis* applied intermediate scrutiny to determine if the statutes violated the second amendment, and ultimately held they did not. *Id*. at 749-51. Defendant here disagrees with that ultimate holding, but urges us to follow *Davis* in concluding that statutes such as section 24–1.7, which apply only to felons, nevertheless implicate the second amendment and require further scrutiny.

¶ 25 Courts in other jurisdictions have taken a different view. The State points to *Rozier*, where the defendant was convicted of possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. § 922(g)(1).[3] The defendant challenged his conviction on the ground that it unconstitutionally invaded his second amendment right to bear arms. *Rozier*, 598 F.3d at 770. He asserted that his possession of a handgun was in the home and for purposes of self-defense, and argued it was therefore protected under the second amendment as interpreted in *Heller*. In

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[2]Sections 24–1.7 and 24–1.1 are the armed habitual criminal statute and the unlawful use of a weapon by a felon statute, respectively.

[3]Section 922(g)(1) provides:

> "It shall be unlawful for any person who has been convicted in any court of[ ] a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g)(1).

rejecting the defendant's argument, the 11th Circuit court of appeals stated: "Prior to taking into account [the defendant's] purpose for possessing the handgun, we must determine whether he is *qualified* to possess a handgun." (Emphasis added.) *Id.* at 770-71. The court pointed to *Heller*'s assertion that "'nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons,'" (*Rozier*, 598 F.3d at 771, quoting *Heller*, 554 U.S. at 626), and stated: "This language suggests that statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment." *Rozier*, 598 F.3d at 771. The court added:

> "Thus, statutory restrictions of firearm possession, such as § 922(g)(1), are a constitutional avenue to restrict the Second Amendment right of certain classes of people. [The defendant], by virtue of his felony conviction, falls within such a class. Therefore, the fact that [the defendant] may have possessed the handgun for purposes of self-defense (in his home)[ ] is irrelevant." *Id.*

The court concluded that § 922(g)(1) imposed no burden on conduct falling within the scope of the second amendment, and the statute therefore was constitutional.

¶ 26 See also *United States v. Feaster*, 394 Fed. App'x. 561, 565 (11th Cir. 2010) ("Since *Heller* expressly disclaimed any erosion of the 'longstanding prohibitions on the possession of firearms by felons,' we held [in *Rozier*] that 'statutes disqualifying felons from possessing a firearm under any and all circumstances do not offend the Second Amendment'"); *United States v. Whisnant*, 391 Fed. App'x. 426, 430 (6th Cir. 2010) ("Relying on that language from *Heller*, this Court has held that § 922(g)(1) comports with the Second Amendment, stating that 'prohibitions on felon possession of firearms do not violate the Second Amendment,' and

'Congress's prohibition on felon possession of firearms is constitutional'"); but see *United States v. Williams*, 616 F.3d 685, 692-93 (7th Cir. 2010) (applying intermediate scrutiny in upholding constitutionality of § 922(g)(1)).

¶ 27 We find the reasoning in *Rozier*, *Feaster*, and *Whisnant* persuasive, and conclude that section 24–1.7, which applies only to recidivist felons, does not impose any burden on conduct falling within the scope of the second amendment. Therefore, further scrutiny of the statute is unnecessary. See *United States v. Marzzarella*, 614 F.3d 85, 89 (3rd Cir. 2010) (if challenged law imposes no burden on conduct falling within scope of second amendment, the inquiry is complete). We reject defendant's argument that section 24–1.7 violates the right to bear arms protected by the second amendment.

¶ 28 Defendant next argues that section 24–1.7, the armed habitual criminal statute, violates the constitutional prohibition against *ex post facto* laws. Under section 24–1.7, which went into effect on August 2, 2005, a person commits the offense of being an armed habitual criminal by receiving, selling, possessing, or transferring a firearm after having been convicted "a total of 2 or more times of any combination of [certain enumerated] offenses." 720 ILCS 5/24–1.7 (West 2008). Defendant asserts that one of his two prior convictions, for residential burglary under case No. 04 CR 13595, occurred before section 24–1.7 went into effect. In defendant's view, his conviction under section 24–1.7 therefore punished him for conduct predating the existence of that statute, in violation of his *ex post facto* rights. He contends section 24–1.7 is unconstitutional as applied to him, and his conviction should be vacated.

¶ 29 Illinois courts have repeatedly rejected this same essential argument. See *People v. Coleman*, 409 Ill. App. 3d 869 (2011); *People v. Davis*, 408 Ill. App. 3d 747 (2011); *People v.*

Ross, 407 Ill. App. 3d 931 (2011); *People v. Adams*, 404 Ill. App. 3d 405 (2010); *People v. Bailey*, 396 Ill. App. 3d 459 (2009); *People v. Leonard*, 391 Ill. App. 3d 926 (2009). In *Leonard*, for example, the court reasoned:

> "The [armed habitual criminal] statute does not punish [the defendant] for the offenses he committed before the statute creating the offense of armed habitual criminal was enacted in August 2005. Rather, he was convicted for the separate offense of possessing a firearm after having been convicted of three of the statute's enumerated offenses. At the time he possessed the AR-15 firearm in April 2006, he had fair warning that, in combination with his prior convictions, he was committing the offense of armed habitual criminal. [The defendant's] prior convictions were only an element of the offense. He was not punished for acts that occurred prior to the statute's effective date but for the new act of possessing a firearm." *Leonard*, 391 Ill. App. 3d at 931-32.

This reasoning, which is similar to that employed in *Bailey* and other cases, applies equally to defendant in the case at bar. Section 24–1.7 does not punish him for the residential burglary he committed before section 24–1.7 was enacted. Rather, he was convicted for the separate offense of possessing a firearm after having been convicted of two of the statute's enumerated offenses, residential burglary and unlawful use of a weapon by a felon. At the time he possessed the .32 caliber firearm on May 22, 2009, he had fair warning that, in combination with his prior convictions, he was committing the offense of being an armed habitual criminal. He was not punished for an act that occurred prior to the statute's effective date, but for the new act of possessing a firearm in May 2009.

¶ 30 We conclude, as have other Illinois courts addressing this issue, that the armed habitual

criminal statute does not violate the United States and Illinois constitutional prohibitions against *ex post facto* legislation.

¶ 31 Defendant next argues that two of the assessments imposed by the circuit court at his sentencing should be vacated. On September 23, 2009, following defendant's guilty plea, the court imposed assessments totaling $740. Included in that amount was a $200 charge for DNA analysis pursuant to 730 ILCS 5/5–4–3(j) (West 2008). Also included was a $100 Trauma Fund assessment pursuant to 730 ILCS 5/5–9–1.10 (West 2008). Defendant contends the circuit court erred in imposing these two assessments. The State agrees.

¶ 32 The $200 DNA analysis assessment is a one-time charge intended to cover the cost of analyzing the DNA sample submitted by a qualifying offender. *People v. Johnson*, 2011 IL 111817, ¶ 28. Here, defendant previously submitted a DNA sample pursuant to a prior conviction; it was thus improper to assess the $200 DNA charge again following another conviction. See *People v. Marshall*, 242 Ill. 2d 285, 296-97, 303 (2011). We therefore vacate the $200 DNA analysis charge imposed by the circuit court in this case.

¶ 33 The $100 Trauma Fund charge was imposed pursuant to section 5–9–1.10 of the Unified Code of Corrections, which lists the offenses for which the $100 charge may be assessed. Section 24–1.7 of the Criminal Code of 1961, the offense for which defendant was convicted, is not included in that list. The $100 Trauma Fund charge thus was unauthorized in this case, and we therefore vacate it.

¶ 34 Defendant next argues he was entitled to a $5 *per diem* credit for the 125 days he was in

custody prior to sentencing, to be applied against the fines imposed by the circuit court.[4] However, the circuit court's fines, fees, and costs sheet does not reflect any presentence incarceration credit. Defendant contends the fines, fees, and costs sheet should be modified to reflect the correct credit.

¶ 35 The State agrees that the fines, fees, and costs sheet should be amended to reflect the proper credit for time spent in custody. However, the State contends the number of days defendant was in custody prior to sentencing was 124, not 125. According to the State, the 125-day figure presumably includes the day of defendant's sentencing. However, the date a defendant is sentenced is counted as a day of *sentence* and not as a day of presentence credit. *People v. Williams*, 239 Ill. 2d 503, 510 (2011). Defendant agrees that the correct pre-sentence custody credit should be 124 days.

¶ 36 We therefore amend defendant's fines, fees, and costs sheet to reflect a $5 *per diem* credit for defendant's 124 days of pre-sentence incarceration. No remand to the circuit court is necessary. *People v. Sterling*, 357 Ill. App. 3d 235, 255 (2005); *People v. Magee*, 374 Ill. App. 3d 1024, 1035-36 (2007) (remand unnecessary because Supreme Court Rule 615(b)(1) (eff. January 1, 1967) authorizes this court to order clerk to make necessary corrections).

¶ 37 In sum, we hold that section 24–1.7, the armed habitual criminal statute, violates neither the second amendment right to bear arms nor the United States and Illinois constitutional

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[4]Section 110–14(a) of the Code of Criminal Procedure provides:

"Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated upon application of the defendant. However, in no case shall the amount so allowed or credited exceed the amount of the fine." 725 ILCS 5/110–14(a) (West 2008).

prohibitions against *ex post facto* legislation. In addition, we vacate the $200 DNA analysis charge and the $100 Trauma Fund charge imposed by the circuit court. We also amend defendant's fines, fees, and costs sheet to reflect a $5 *per diem* credit for the 124 days defendant was in custody prior to sentencing.

¶ 38 CONCLUSION

¶ 39 We affirm, as modified, defendant's conviction and sentence for the offense of being an armed habitual criminal pursuant to section 24–1.7(a) of the Criminal Code of 1961 (720 ILCS 5/24–1.7(a) (West 2008). We vacate the $200 DNA analysis charge and the $100 Trauma Fund charge assessed against defendant, and we amend defendant's fines, fees, and costs sheet to reflect 124 days of pre-sentence incarceration credit.

¶ 40 Affirmed as modified.