2011 IL App (2d) 100015-U
No. 2—10—0015
Order filed August 18, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 08—CF—1084
TROY L. CAMPBELL,	)	Honorable Peter J. Dockery,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: (1) Defense counsel's compliance with his client's wishes will not support a claim of ineffective assistance of counsel; (2) the trial court properly assessed a $10 Arrestee's Medical Costs Fund; and (3) the defendant's $200 DNA collection fee would be vacated because he was already registered in the DNA database.

¶ 1 Following a bench trial, the defendant, Troy Campbell, was convicted of controlled substance trafficking (720 ILCS 570/401.1(a) (West 2008)) and was sentenced to 24 years' imprisonment and to pay certain costs and fees. On appeal, the defendant argues that (1) his defense counsel was ineffective and deprived him the opportunity to earn an additional 56 days of presentence credit

against his sentence; (2) the trial court erred in assessing a $10 Arrestee's Medical Costs Fund; and (3) this court should vacate the DNA collection fee because the defendant had already submitted a sample pursuant to a prior conviction. We affirm as modified.

¶ 2 On May 13, 2008, the defendant was charged by indictment with unlawful possession of a controlled substance with the indent to deliver (720 ILCS 570/401(a)(7.5)(C)(ii) (West 2008)) and controlled substance trafficking (720 ILCS 570/401.1(a) (West 2008)). Specifically, the indictment alleged that the defendant brought between 600 and 1500 pills of methylenedioxymethamphetamine (MDMA) into Illinois with the intent to deliver that controlled substance. Following his arrest, the defendant posted bond and was released. The defendant hired Attorney John Giralamo to represent him.

¶ 3 At a hearing on June 9, 2008, a public defender informed the trial court that the defendant had been arrested on a different charge, docketed as case 09—CF—1310, while he was out on bond in the present case, 08—CF—1084. The defendant was in custody at the Du Page County jail for that new charge. Upon learning this, the trial court then had the following colloquy with Attorney Giralamo:

"THE COURT: *** [D] oes your client wish to remain on bond [in the present case]?

DEFENSE COUNSEL: Yes, Judge. I did discuss that with him[.]"

Following Attorney Giralamo's statement, the trial court indicated that the defendant would remain on bond in the present case.

¶ 4 On July 21, 2009, the trial court conducted a hearing on Attorney Giralamo's motion to withdraw. The defendant was present at the hearing. The trial court denied Attorney Giralamo's motion to withdraw. The trial court also asked Attorney Giralamo if he wished that the defendant

continue to be on bond in the present case or that he be held in custody. Attorney Giralamo asked that the defendant remain on bond.

¶ 5 On August 28, 2009, Attorney Giralamo again moved to withdraw, and Attorney William Rath moved to substitute as counsel for the defendant. The trial court then allowed Attorney Rath to represent the defendant and Attorney Giralamo to withdraw. On Attorney Rath's request, the trial court exonerated the defendant's bond on the present case

¶ 6 On September 1 and 2, 2009, the trial court conducted a trial in the present case. At the close of the trial, the trial court found the defendant guilty of both counts in the indictment. On December 9, 2009, following the denial of the defendant's posttrial motions, the trial court merged the defendant's convictions on the two counts and sentenced him to 24 years' imprisonment for controlled substance trafficking. The trial court ordered that the defendant be awarded 134 days of presentence custody credit. The trial court also fined the defendant $3,000 and gave him a $640 credit for his 134 days of presentence detention. The trial court further ordered that the defendant pay other court costs, fees, and penalties as required by law. The trial court determined that the defendant would not have to submit to DNA indexing or pay the accompanying $200 fee because he had previously submitted to DNA indexing in connection with a prior conviction. Following the denial of his motion to reconsider sentence, the defendant filed a timely notice of appeal.

¶ 7 The defendant's first contention on appeal is that he was deprived the effective assistance of counsel. Specifically, the defendant argues that defense counsel was ineffective for failing to timely surrender the defendant in exoneration of his bond while the defendant was in custody for a subsequent unrelated offense. The defendant contends that defense counsel's ineffectiveness deprived him the opportunity to earn an additional 56 days of presentence credit.

¶ 8 In order to succeed on a claim of ineffective assistance of trial counsel, a defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Enis*, 194 Ill. 2d 361, 376-77, (2000). The defendant must establish both that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have differed. *People v. Little*, 335 Ill. App. 3d 1046, 1052 (2003). A reviewing court may dispose of an ineffectiveness claim on the prejudice prong alone by determining that the defendant was not prejudiced by counsel's representation. *People v. Munson*, 171 Ill. 2d 158, 184 (1996). Further, defense counsel's compliance with his client's wishes will not support a claim of ineffective assistance of counsel. *People v. Orange*, 168 Ill. 2d 138, 169 (1995).

¶ 9 Pursuant to section 5—8—7(b) of the Unified Code of Corrections, a defendant is to receive credit against his sentence for time spent in custody as a result of the offense for which the sentence is imposed. 730 ILCS 5/5—8—7(b) (West 2008). When a defendant is out on bond pursuant to one offense and is subsequently arrested and returned to custody on a second offense, the defendant is returned to custody on the initial offense when his bond is withdrawn or revoked. *People v. Arnhold*, 115 Ill. 2d 379, 383 (1987). Thus, when a defendant is brought into custody on the second offense and then surrenders in exoneration of the bond he posted on a previous offense, he is in simultaneous pretrial custody for both offenses. *People v. Robinson*, 172 Ill. 2d 452, 459 (1996). Under these circumstances, the defendant is entitled to section 5—8—7(b) presentence credit for both offenses. *People v. Centeno*, 394 Ill. App. 3d 710, 714 (2009).

¶ 10 In an instance where defense counsel is aware that the defendant is in custody in another jurisdiction, "[i]t behoove[s] defense counsel to move to withdraw the bond posted in the instant case in order to allow the defendant to earn credit against his eventual sentences in the instant case

at the same time that he earned credit against his sentence in the [other jurisdictions]. *People v. DuPree*, 353 Ill. App. 3d 1037, 1049 (2004).

¶ 11 Here, the record indicates that defense counsel complied with the defendant's wishes in not surrendering the defendant in exoneration of his bond. The trial court asked defense counsel on two occasions whether he wanted to surrender the defendant. On the first occasion, defense counsel indicated that he did not want to surrender the defendant and that he had discussed the matter with the defendant. On the second occasion, the defendant was present when defense counsel informed the trial court that he wanted the defendant to remain on bond. The defendant did not object to defense counsel's comments. Because the defendant agreed with defense counsel not to surrender him on bond, the defendant cannot now complain that defense counsel was ineffective on that basis. See *Orange* 168 Ill. 2d at 169.

¶ 12 In so ruling, we find the defendant's reliance on *Centeno* and *DuPree* misplaced. In neither of those cases did the defendant agree with his defense counsel's decision not to surrender the defendant in exoneration of his bond. See *Centeno*, 394 Ill. App. 3d at 712; *DuPree*, 353 Ill. App. 3d at 1045-49.

¶ 13 Further, we decline to rule on the defendant's argument that he was not "made to understand the significance his choice to surrender in exoneration of his bond might have on his sentence." We agree that the record does not show whether the defendant was appropriately advised regarding the possible exoneration of his bond. As this argument pertains to matters outside the record, however, we cannot consider it on direct appeal. See *People v. Ligon*, 365 Ill. App. 3d 109, 122 (2006) (claims of ineffective assistance of counsel involving matters outside the record are not appropriately reviewed on direct appeal and should be raised in a proceeding for postconviction relief).

¶ 14 The defendant's second contention on appeal is that this court should vacate the $10 Arrestee's Medical Costs Funds assessment (730 ILCS 125/17 (West 2008)) imposed by the trial court. The defendant maintains that because there was no evidence that he received any medical treatment following his arrest, or that the county incurred any expense relating to any medical treatment, the assessment was improper.

¶ 15 We considered and rejected this identical argument in *People v. Evangelista*, 393 Ill. App. 3d 395, 399-400 (2009). In that case, we explained that the statute at issue could reasonably be construed as creating a fund to be used for medical expenses for all arrestees, not just those who had caused the county to incur medical expenses. *Id.* at 400. Despite the defendant's invitation to reconsider our holding in *Evangelista*, we decline to do so.

¶ 16 The defendant's final contention on appeal is that the $200 DNA collection fee should be vacated. The defendant argues that although the trial court ordered that the fee should not be imposed because the defendant had previously submitted a DNA sample, the Clerk's record nonetheless reflects that the $200 DNA collection fee was levied against him. The defendant requests that the trial court's order be amended to remove the $200 DNA collection fee.

¶ 17 The defendant's argument is controlled by our supreme court's recent decision in *People v. Marshall*, 242 Ill. 2d 285, 2011 WL 1886893 (2011). In that case, the supreme court explained:

> "A one-time submission into the police DNA database is sufficient to satisfy the purpose of the statute in creating a database of the genetic identities of recidivist criminal offenders, because once an offender's DNA data is stored in the database, it remains there unless and until the offender's conviction is reversed based on a finding of actual innocence or he is pardoned based on a finding of actual innocence. 730 ILCS 5/5—4—3(f-1) (West 2008).

> Moreover, since the analysis fee is intended to cover the costs of the DNA analysis, and only one analysis is necessary per qualifying offender, then by extension only one analysis fee is necessary as well." *Id.* at *6.

¶ 18 Here, because the record reveals that the defendant had previously submitted to DNA testing pursuant to section 5—4—3(f-1), he was not required to submit to DNA testing again or to pay the accompanying fee. We therefore vacate that portion of the trial court's order requiring the defendant to pay the $200 DNA analysis fee. The remainder of the trial court's judgment is affirmed.

¶ 19 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed as modified.

¶ 20 Affirmed as modified.