

2012 IL App (2d) 100826-U  
No. 2-10-0826  
Order filed March 29, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Winnebago County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-509
	)	
ALONZO C. WILLIAMS,	)	Honorable
	)	Richard A. Lucas,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

**ORDER**

*Held:* (1) Defense counsel was not ineffective for failing to interview witnesses who would have opined that defendant was not under the influence of alcohol when he drove: given the evidence of his physical indicia of intoxication and the potential biases of the proposed witnesses, there was no reasonable probability that their testimony would have changed the outcome; (2) defendant's successive (and thus unauthorized) DNA analysis fee vacated; (3) defendant was entitled to full credit against his drug-court/mental-health-court and child-advocacy-center fines, to reflect the 486 days he spent in presentencing custody, and defendant's fine for the Violent Crime Victims Assistance Fund reduced from \$20 to \$4 to reflect the other fines imposed.

¶ 1 Following a jury trial, defendant, Alonzo C. Williams, was convicted of aggravated driving under the influence (625 ILCS 5/11-501(d)(1)(A) (West 2008)), aggravated driving while his license

was revoked (625 ILCS 5/6-303(d-4) (West 2008)), operating an uninsured motor vehicle (625 ILCS 5/3-707(a) (West 2008)), and transporting alcoholic liquor in a motor vehicle (625 ILCS 5/11-502(a) (West 2008)). The trial court sentenced defendant to six years' imprisonment for aggravated driving under the influence and two years' imprisonment for aggravated driving while his license was revoked, to run concurrently. Defendant appeals, arguing that (1) his trial counsel was ineffective for failing to interview and present two witnesses and (2) various fines and fees should be vacated or modified. For the following reasons, we affirm as modified.

¶ 2

#### BACKGROUND

¶ 3 In addition to the offenses of which he was convicted, defendant was charged with disobeying a stop sign (625 ILCS 5/11-1204(b) (West 2008)).

¶ 4 At trial, Officer Brian Wakeley of the Rockford police department gave the following testimony. On February 18, 2009, he responded to a call of two people fighting in the street. As he approached the location of the call, he passed a gold Ford Ranger and observed defendant getting into the vehicle. Wakeley did not think much of defendant's behavior until a group of people outside pointed at the truck and said, "That's him." Wakeley then performed a U-turn to follow defendant's truck. After he turned around, and while he was approximately 100 feet from defendant's vehicle, Wakeley observed defendant roll through a stop sign without stopping and make a right turn. By the time Wakeley made the same right turn, defendant's vehicle was no longer in sight, at which point Wakeley returned to talk to the group of people.

¶ 5 When he returned to the people, Wakeley saw defendant pull up to the scene and get out of the truck. Defendant approached Wakeley and said, "Man, I messed up." He told Wakeley that he should have stayed at the scene and talked to the police. Wakeley observed that defendant had a

strong odor of alcohol on his breath and that his eyes were glassy and bloodshot. Given defendant's appearance of intoxication, Wakeley placed him in the backseat of the patrol car. After running defendant's driver's license, Wakeley learned that defendant's license had been revoked. Wakeley also checked the interior of defendant's vehicle and found a can of beer in the center console.

¶ 6 Investigator James Lake of the Rockford police department testified as follows. On February 18, 2009, at approximately 12:55 p.m., he responded to a call to help investigate a possible case of driving under the influence. When he arrived on the scene, Lake observed defendant sitting in the backseat of a police car. While speaking with defendant, Lake observed that defendant had bloodshot and glassy eyes, his speech was slurred, and his breath smelled of alcohol. Lake also observed defendant swaying from side to side, to the point where defendant, at one point, had to place his hand flat on the side of the car to regain his balance. Defendant told Lake that he had consumed some beer at lunch around 11 a.m.

¶ 7 Lake had defendant perform the walk-and-turn field sobriety test. In performing the test, defendant began before he was directed to do so, raised his arms more than six inches from his sides, mistouched his heel to toe on multiple steps, and failed to turn as demonstrated by Lake. Based on defendant's performance, Lake believed that defendant was impaired. Lake was going to have defendant perform the one-leg-stand field sobriety test, but defendant informed Lake that he would be unable to perform the test due to the fact that he had undergone orthopedic knee surgery, had a rod in his leg, and was unable to stand on one leg. Defendant did not mention that he had any problem doing the walk-and-turn test. Lake did not have defendant perform any other field sobriety tests. Based on his observations of defendant, Lake placed defendant under arrest. Although Lake gave defendant the opportunity to perform a certified breath test, defendant declined. Based on

defendant's appearance, odor, and performance on the field sobriety test, Lake believed that defendant had driven while impaired.

¶ 8 Defendant gave the following testimony. On the morning of February 18, 2009, he went to his parents' house, where he met his sister Joann. While at the house, defendant consumed a can of beer. His niece, B.J., then picked defendant and Joann up in the gold Ford Ranger and drove them to the social security office. Once they finished at the social security office, the three went to defendant's nephew Chester's house. At the house, defendant's other nephew, Charlie, was working on a broken-down car, and defendant went to help him. After working on the vehicle for approximately 15 minutes, defendant and Charlie got into an argument about the money Charlie owed defendant's mother for the vehicle. In an attempt to cool off, defendant got into the Ford Ranger and drove around a couple of blocks.

¶ 9 When he returned to the house, defendant saw police vehicles parked out front. An officer asked defendant to step out of his vehicle, and as he did, defendant told the officer that he had messed up. Defendant said that because he was not supposed to be driving. The officer told defendant that there was a beer in the truck, and defendant told the officer that the beer did not belong to him. Defendant did not put the beer in the truck and it was not there when he got out of the truck at Chester's house. The only person who went into the truck between the time defendant arrived at Chester's and the time he got back into the truck after his argument with Charlie was Joann. Defendant noticed the beer when he had driven about half a block from Chester's, but he did not drink from it at all.

¶ 10 Defendant told the officer that he had a rod in his left leg and that he had undergone surgery on his right leg. In addition, defendant suffered from rheumatoid arthritis and had no feeling in the

top of his left foot. On direct examination, defendant testified that he relayed this information to the officer prior to performing any field sobriety tests, but on cross-examination, defendant testified that he did not recall when he told the officer this information. He did not inform the officer that he would have any trouble performing the walk-and-turn test, but he did tell him that he would be unable to perform the one-leg test properly.

¶ 11 Defendant was unable to give a solid timeline for the morning of February 18, 2009, testifying at times that he arrived at his mother's house at approximately 9 a.m. and at other times testifying that he arrived there between 11 a.m. and 12 p.m.

¶ 12 Following deliberations, the jury found defendant guilty of all of the charges except disobeying a stop sign.

¶ 13 Following trial, defendant retained a new attorney. In his amended motion for a new trial, defendant alleged, among other things, that trial counsel had been ineffective for failing to interview several witnesses, including Joann Neace and Sherry Williams, defendant's sisters. In her affidavit attached to the amended motion for a new trial, Joann stated that she was with defendant on the morning of February 18, 2009, and that he was not under the influence of alcohol when he was arrested. She also stated that the beer found in the truck while defendant was driving belonged to and had been placed there by her. She stated that she attempted to contact defendant's attorney on numerous occasions by phone, attending court dates, and going to the attorney's office, but that each time her call was not returned or no one would speak with her. Sherry stated in her affidavit that she was with defendant for several hours shortly before he was arrested and that, in her opinion, he was not under the influence of alcohol. She also provided the names of six other people who had contact with defendant shortly before he was arrested. She stated that she attended defendant's court

appearances on multiple occasions and attempted to speak with his attorney, but was denied the opportunity to do so. Following arguments by the parties, the trial court denied defendant's amended motion for a new trial.

¶ 14 The trial court sentenced defendant to six years' imprisonment for aggravated driving under the influence and two years' imprisonment for aggravated driving while his license was revoked, to run consecutively. Following consideration of defendant's motion to reconsider the sentence, however, the trial court modified its judgment so that the sentences would run concurrently. Defendant then filed this timely appeal.

¶ 15 ANALYSIS

¶ 16 Defendant first contends that his trial counsel was deficient for failing to interview Joann and Sherry and that, because of the closeness of the evidence presented, there was a reasonable probability that had Joann and Sherry testified defendant would not have been found guilty. Alternatively, defendant contends that the matter should be remanded to the trial court for further consideration of defendant's ineffective-assistance-of-counsel claim because the trial court decided the motion without hearing any testimony.

¶ 17 Defendant's latter contention—that the trial court erred in failing to hear live testimony on defendant's ineffective-assistance-of-counsel claim—is forfeited, as defendant never requested the opportunity to present live testimony in support of his motion. Defendant has failed to cite any authority establishing an obligation on the part of the trial court to demand the presentation of live testimony in support of a motion when the movant makes no such request. The cases cited by defendant in support of the proposition that the trial court prematurely denied defendant's motion are inapplicable to the present case, because they discuss the level of inquiry that must be conducted

by the trial court in reviewing *pro se* allegations of ineffective assistance of counsel and determining whether to appoint counsel for further investigation of the claims. See *People v. Moore*, 207 Ill. 2d 68, 78 (2003); *People v. Robinson*, 157 Ill. 2d 68, 86 (1993); *People v. Williams*, 224 Ill. App. 3d 517, 524 (1992); *People v. Parsons*, 222 Ill. App. 3d 823, 829-30 (1991). They do not speak to a trial court's obligation to ensure that a defendant represented by counsel puts on sufficient evidence to support his claim of ineffective assistance of counsel. Given that defendant makes no claim that posttrial counsel was ineffective in his representation of defendant on the amended motion for a new trial, we see no reason to conclude that the trial court erred by failing to consider evidence that defendant did not seek to present to the court.

¶ 18 Defendant's claim that he received ineffective assistance from trial counsel is likewise without merit. A claim of ineffective assistance of counsel requires a defendant to establish that (1) his attorney's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). Defendant has failed to establish that, but for counsel's alleged error, the result of the proceeding would have been different, as the testimony of Joann and Sherry would have done little to overcome the other evidence of defendant's intoxication.

¶ 19 Despite defendant's contention to the contrary, the evidence of his intoxication was not closely balanced. Both Wakeley and Lake testified that a strong odor of alcohol emanated from defendant and that his eyes were glassy and bloodshot. Lake also testified that defendant's speech was slurred and that defendant was swaying back and forth to the extent that he needed to place his hand on the police car to regain his balance. According to Lake, defendant's performance on the

walk-and-turn field sobriety test indicated that defendant was under the influence of alcohol. Although defendant characterizes the defects in his performance on the walk-and-turn test as “minor,” Lake testified that defendant failed to follow the given instructions in a number of ways: he began before being instructed to do so, raised his arms more than six inches from his sides, mistouched his heel to his toe on multiple steps, and failed to perform the turn as Lake demonstrated. Defendant also claims that his leg injury could explain his poor performance on the walk-and-turn test and his swaying. Lake’s testimony, however, revealed that defendant did not mention his leg condition until after he performed the walk-and-turn test. In addition, defendant testified that he did not inform the officer that his leg condition would hinder his performance on anything other than the one-leg test. In light of this evidence and the relationship between defendant and Joann and Sherry, we do not believe that Joann’s and Sherry’s testimony that it was their opinion that defendant was not under the influence of alcohol would have created a reasonable probability that defendant would have been found not guilty.

¶ 20 Defendant also contends on appeal that various fines and fees imposed upon him should be vacated or modified. The State agrees, as do we. Although defendant did not raise any of these issues in the trial court, they are not forfeited, because a sentence that does not conform to a statutory requirement is void and may be corrected at any time. *People v. Arna*, 168 Ill. 2d 107, 113 (1995).

¶ 21 First, defendant argues that the \$200 DNA analysis fee, assessed under section 5-4-3 of the Unified Code of Corrections (Code) (730 ILCS 5/5-4-3 (West 2008)), must be vacated, because he previously submitted his DNA. “[S]ection 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.” *People v. Marshall*, 242 Ill. 2d 285, 303

(2011). When the defendant's DNA is already registered in the DNA database, the fee is not authorized and it must be vacated. *Marshall*, 242 Ill. 2d at 303. Here, defendant previously submitted a DNA sample. Accordingly we vacate the \$200 DNA analysis fee.

¶ 22 Defendant next contends that the Violent Crime Victims Assistance Fund fine of \$20 imposed on him must be reduced to \$4, because he was also assessed a drug court-mental health court fee of \$10 and a Child Advocacy Center fee of \$10. The \$20 Violent Crime Victims Assistance Fund fine is to be imposed only when "no other fine is imposed." 725 ILCS 240/10(c) (West 2008). Where other fines are imposed, the court is to assess "an additional penalty of \$4 for each \$40, or fraction thereof, of fine imposed." 725 ILCS 240/10(b) (West 2008). Although referred to as fees, the drug court-mental health court fee and the Child Advocacy Center fee are fines. See *People v. Graves*, 235 Ill. 2d 244, 255 (2009); *People v. Jones*, 397 Ill. App. 3d 651, 660 (2009). Accordingly, here, where the other fines total \$20, under the statute defendant's Violent Crime Victims Assistance Fund fine should be \$4.

¶ 23 Finally, defendant contends that the drug court-mental health court fee and Child Advocacy Center fee should be offset by the \$5-per-day credit to which defendant is entitled for the time he spent in presentencing custody. Section 110-14(a) of the Code 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).

Although defendant did not apply for the credit in the trial court, because the credit is mandatory he is permitted to make the request for the first time on appeal. *People v. Woodard*, 175 Ill. 2d 435, 457 (1997).

¶ 24 As mentioned, although referred to as fees, the drug court-mental health court fee and the Children's Advocacy Center fee are fines. See *Graves*, 235 Ill. 2d at 255; *Jones*, 397 Ill. App. 3d at 660. Defendant spent 486 days in presentencing custody and is entitled to credit under section 110-14(a) of the Code in an amount sufficient to satisfy the \$10 drug court-mental health court fee and the \$10 Children's Advocacy Center fee.

¶ 25 **CONCLUSION**

¶ 26 For the reasons stated, we affirm defendant's convictions, vacate the \$200 DNA analysis fee, reduce the Violent Crime Victims Assistance Fund fine to \$4, and modify the mittimus to reflect that the drug court-mental health court fee and the Child Advocacy Center fee are satisfied by the credit to which defendant is entitled for the time he spent in presentencing custody.

¶ 27 Affirmed as modified.