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2012 IL App (3d) 100644-U

Order filed March 2, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
Plaintiff-Appellee,) Will County, Illinois,
)
v.) Appeal No. 3-10-0644
) Circuit No. 07-CF-338
BRANDON LAWSON,)
) Honorable
Defendant-Appellant.) Carla Policandriotes,
) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant, who was sentenced to consecutive sentences, was entitled to presentence custody credit for time served as a consequence of either offense. The portion of the sentencing order requiring the defendant to submit a DNA sample and pay a \$200 DNA analysis fee should be vacated because the defendant had a DNA sample on file at the time of sentencing.

¶ 2 Pursuant to a fully negotiated plea agreement, the defendant, Brandon Lawson, pled guilty to residential burglary (720 ILCS 5/19-3 (West 2006)). He was sentenced to six years of imprisonment, which was to be served consecutively to his sentence for an unrelated felony offense.

On appeal, the defendant argues that: (1) he was entitled to sentencing credit for all the time spent in presentence custody as a result of either offense that was part of his consecutive sentences; and (2) the portion of the trial court's sentencing order requiring him to submit a deoxyribonucleic acid (DNA) sample and pay a \$200 DNA analysis fee should be vacated because he already had a DNA sample on file at the time of sentencing. We amend the mittimus to reflect 127 days of sentencing credit and vacate the portion of the judgment ordering the defendant to submit a DNA sample and pay the \$200 analysis fee.

¶ 3

FACTS

¶ 4 The record shows that on November 27, 2006, the defendant was in the custody of the Grundy County sheriff on an unrelated offense and posted bond the following day in that case. On January 8, 2007, the defendant committed the residential burglary offense in this case in Will County. On January 11, 2007, the defendant's bond was forfeited in the Grundy County case. On January 29, 2007, the defendant was taken into the custody of the Grundy County sheriff in the Grundy County case.

¶ 5 In this case, the defendant was indicted in Will County on March 8, 2007. The defendant did not serve any time in the presentence custody of the Will County sheriff but, instead, remained in the custody of the Grundy County sheriff. On August 29, 2007, the defendant pled guilty to the residential burglary charge in this case and was sentenced to a negotiated sentence of six years of imprisonment, which was to be served consecutive to whatever sentence he received in his pending Grundy County case. He was also ordered to pay \$419 in fees, which included a \$200 DNA analysis fee. The court ordered that the defendant be booked into the Will County detention center, then immediately booked out, and returned to the custody of the Grundy County sheriff. The court further

ordered that the defendant receive no presentence custody credit in this case because he had never been in the custody of the Will County sheriff.

¶ 6 The defendant remained in presentence custody in the Grundy County jail until the following day, August 30, 2007, when he pled guilty to the Grundy County offense and was sentenced for the Grundy County conviction. The defendant was sentenced to 30 months of conditional discharge. The sentencing order indicated that the defendant "[s]hall serve 180 days in the Grundy County Jail, given credit for 217 days served, plus credit for good time" and that the defendant's sentence had been completed.

¶ 7 On May 20, 2008, the defendant filed a motion to amend the mittimus in this case for 190 days of presentencing credit. On May 23, 2008, the trial court denied the motion, reasoning that the defendant was incarcerated in Grundy County on a warrant in that case and not entitled to presentencing credit in this case. On July 14, 2008, the trial court received correspondence from the defendant requesting the outcome of the May 23, 2008, hearing on his motion to amend the mittimus. On August 22, 2008, the trial court received correspondence from the defendant indicating that the trial court had misconstrued his previous motion to amend the mittimus, and defendant requested 140 days of presentencing credit in this case. On September 10, 2008, at the hearing addressing defendant's correspondence, the assistant State's Attorney argued that this was a consecutive sentence case and the defendant could not receive double credit for the days that he was in custody. The defendant's attorney stated, "That's correct." The trial court found that the mittimus in this case, which did not award any presentencing credit, was accurate because the defendant was never in the custody of the Will County sheriff.

¶ 8 On July 23, 2010, the defendant filed another motion to amend the mittimus. The defendant

argued that because he was sentenced to 180 days in the Grundy County case with credit for 217 days served in pretrial custody and also day-for-day good credit, he did not receive credit for all the time served in presentence custody that was applicable toward his consecutive sentences. The defendant argued that he was "entitled to at least 37 days credit against this sentence and possibly 127 days' credit, depending on when [the trial court] holds the Grundy County sentence was completed." On July 30, 2010, the State appeared at the hearing on the defendant's motion and argued that defendant was not entitled to any credit in this case. The trial court denied the defendant's motion, indicating that the relief sought had previously been addressed by the court and the defendant was not entitled to the credit he requested. On August 17, 2010, the defendant filed a notice of appeal.

¶ 9

ANALYSIS

¶ 10

I

¶ 11 First, the State argues that we lack jurisdiction to consider the defendant's appeal because the defendant did not file a timely notice of appeal following the September 10, 2008, denial of his request for sentencing credit. The State argues that the defendant should not have been allowed another opportunity, on July 23, 2010, to request presentencing credit after the trial court had previously denied his request. The State contends that because the defendant should not have been permitted to file his motion to amend the mittimus on July 23, 2010, this court lacks jurisdiction to hear an appeal from the denial of that motion. The State cites no authority for its position.

¶ 12 Here, the defendant filed a timely direct appeal from the trial court's July 30, 2010, denial of his request for sentencing credit. See *People v. White*, 357 Ill. App. 3d 1070 (2005) (providing that defendant may ask the trial court to amend the mittimus at any time to reflect presentence credit earned by the defendant, and this court has jurisdiction to consider an appeal from the trial court's

denial of that motion). Accordingly, we have jurisdiction to review this appeal.

¶ 13

II

¶ 14 The defendant argues that he was entitled to 127 days of presentence credit in this case because he was ordered in the Grundy County case to serve 180 days in jail with good time credit. The defendant contends that with the credit, his sentence was completed in 90 days, and he is entitled to have the remaining 127 days that he spent in the Grundy County jail applied to his sentence in this case, as presentence credit. The State concedes that the defendant is entitled to 127 days of sentencing credit. We agree with the parties.

¶ 15 The defendant was entitled to have the remaining 127 days of presentencing credit applied in this case. See 730 ILCS 5/5-8-4(e)(4) (West 2008). He served only 90 days of the 180-day jail sentence in the Grundy County case because of his day-for-day good conduct credit, but was incarcerated for an additional 127 days. Thus, since the sentences were consecutive, the defendant is entitled to 127 days of presentence credit to be applied in this case. We therefore amend the mittimus to reflect 127 days of sentencing credit.

¶ 16

III

¶ 17 The defendant additionally argues that the portion of the trial court's sentencing order requiring him to submit a deoxyribonucleic acid (DNA) sample and pay a \$200 DNA analysis fee should be vacated because he already had a DNA sample on file at the time of sentencing. We review the matter *de novo* as a question of statutory interpretation. *People v. Marshall*, 242 Ill. 2d 285 (2011).

¶ 18 Under section 5-4-3(a) of the Unified Code of Corrections (Code), a person convicted of a felony shall be required "to submit specimens of blood, saliva, or tissue to the Illinois Department

of State Police." 730 ILCS 5/5-4-3(a) (West 2008). They are also required to pay an analysis fee of \$200. 730 ILCS 5/5-4-3(j) (West 2008). Our supreme court has held that a "one-time submission into the police DNA database is sufficient to satisfy the purpose of the statute." *Marshall*, 242 Ill. 2d at 296. The DNA sample and analysis fee mandate was added to the Code in 1997 (Pub. Act 90-130 (eff. Jan. 1, 1998) (amending 730 ILCS 5/5-4-3 (West 1996))), which supports a presumption that the mandate was imposed as part of a sentence for a qualifying offense after section 5-4-3 became law on January 1, 1998. *People v. Leach*, 2011 IL App (1st) 090339.

¶ 19 In the appendix to the defendant's brief, the defendant included an Illinois State Police DNA submission and analysis report indicating that the defendant's DNA had previously been collected in relation to a 2003 residential burglary conviction. Although the record on appeal does not specifically indicate whether the DNA analysis fee was assessed in 2003, we can presume that the circuit court imposed the fee as part of the defendant's sentence in that case. Therefore, under *Marshall*, the order for DNA analysis and payment of a DNA analysis fee in this case was not authorized because the defendant's DNA is already registered. We vacate the portion of the defendant's sentence ordering him to submit his DNA and pay a \$200 DNA fee.

¶ 20 CONCLUSION

¶ 21 We amend the mittimus to reflect 127 days of sentencing credit and vacate the portion of the trial court's judgment imposing the DNA analysis and fee. The judgment is affirmed on all other grounds.

¶ 22 Affirmed in part, vacated in part, and amended in part.