

**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).

2014 IL App (4th) 130338-U

NO. 4-13-0338

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

October 30, 2014

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
LONNIE D. LILLARD,	)	No. 07CF1265
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Appleton and Justice Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court did not err in dismissing defendant's section 2-1401 petition because his two-year mandatory-supervised-release term attached at sentencing by operation of law.

(2) We vacate fines imposed by the circuit clerk and remand to the trial court to reimpose the mandatory fines in effect at the time of the offense.

¶ 2 Defendant, Lonnie D. Lillard, appeals the trial court's dismissal of his *pro se* petition for relief from judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). We affirm in part, vacate in part, and remand with directions.

¶ 3 **I. BACKGROUND**

¶ 4 In October 2007, a jury convicted defendant of unlawful possession with intent to deliver a controlled substance, a Class 1 felony, committed on July 22, 2007. 720 ILCS 570/401(c)(2) (West 2006). In December 2007, the trial court sentenced defendant to 15 years'

imprisonment. In addition to imprisonment, the trial court ordered defendant to pay a \$100 crime laboratory analysis fee, a \$200 mandatory drug assessment, a \$150 street value fine, all court costs, and all statutory fees and fines, and, "[i]f he has not already done so, he is to submit a sample of blood, saliva, or tissue to the Illinois Department of State Police within 45 days at a collection site designated by the Departments of Corrections and State Police in accordance with the statute and then to pay a two hundred dollar marker grouping analysis fee." (Emphasis added.) Neither during the sentencing hearing nor in its written sentencing judgment did the trial court mention defendant would be required to serve a term of mandatory supervised release (MSR).

¶ 5 Thereafter, the following assessments relevant to this appeal were imposed by the circuit clerk: (1) a \$10 arrestee's medical assessment, (2) a \$50 court-finance fee, (3) a \$5 spinal-cord-research assessment, (4) a \$100 trauma-fund assessment, (5) a \$540 traffic/criminal-surcharge assessment, (6) a \$216 Violent Crimes Victims Assistance (victims assistance) assessment, (7) a \$5 drug-court assessment, and (8) a \$200 deoxyribonucleic acid (DNA) analysis fee.

¶ 6 Defendant filed a direct appeal, and this court affirmed. *People v. Lillard*, No. 4-07-1022 (Aug. 19, 2008) (unpublished order under Supreme Court Rule 23).

¶ 7 In February 2013, defendant filed the instant *pro se* petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (725 ILCS 5/2-1401 (West 2012)). Defendant's petition alleged he should not have received an MSR term of 2 years as he was already sentenced to the maximum 15 years for a Class 1 felony. In April 2013, the trial court entered an order dismissing defendant's petition as frivolous and patently without merit, and untimely, having been filed more than five years after entry of judgment.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant argues the trial court erred in dismissing his section 2-1401 petition for postjudgment relief. Specifically, defendant contends the Illinois Department of Corrections (DOC) violated his right to due process when it added a 2-year MSR term to his 15-year prison sentence. Additionally, defendant argues this court should vacate several fines assessed by the circuit clerk and remand his case to the trial court for the fines to be properly imposed. For the reasons that follow, we affirm the trial court's dismissal of defendant's section 2-1401 petition, vacate the circuit clerk's imposition of fines, and remand for the trial court to impose all mandatory fines in effect at the time of the offense.

¶ 11 A. MSR

¶ 12 Defendant argues DOC had no authority to extend the 15-year sentence imposed by the trial court, and therefore this court should find the 2-year MSR term void. In the alternative, defendant asks this court to reduce his 15-year sentence by 2 years so he is not in DOC custody for longer than the term imposed by the trial court. The State counters that DOC did not impose the MSR term, but rather, the term attached by operation of law. Because our supreme court has decided this issue in *People v. McChriston*, 2014 IL 115310, 4 N.E.3d 29, we agree with the State.

¶ 13 "[T]he purpose of a section 2-1401 petition is to bring facts to the attention of the circuit court which, if known at the time of judgment, would have precluded its entry." *People v. Haynes*, 192 Ill. 2d 437, 463, 737 N.E.2d 169, 183 (2000). This court reviews a trial court's dismissal of a section 2-1401 petition *de novo*. *McChriston*, 2014 IL 115310 ¶ 6, 4 N.E.3d 29.

¶ 14 At the time of defendant's sentence, section 5-8-1(d) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-1(d) (West 2006)) stated: "[E]very sentence shall include as though written therein a term in addition to the term of imprisonment." Under the statute, a Class 1 felony carried an MSR term of two years. 730 ILCS 5/5-8-1(d)(2) (West 2006). Thus, as our supreme court stated in *McChriston*, "[t]he plain language of section 5-8-1(d) at the time of defendant's sentencing was unambiguous and \*\*\* the [IDOC] did not add onto defendant's sentence when it enforced the MSR term." *McChriston*, 2014 IL 115310 ¶ 23, 4 N.E.3d 29. Rather, "the MSR term attached automatically as though written into defendant's sentence." *McChriston*, 2014 IL 115310 ¶ 31, 4 N.E.3d 29. Because we follow the plain language of the statute and our supreme court's binding precedent, we find the two-year MSR term attached to defendant's sentence by operation of law at the time of sentencing. Therefore, the trial court did not err in dismissing defendant's section 2-1401 petition.

¶ 15 B. Fines and Fees

¶ 16 Defendant next argues and the State concedes this court should vacate fines improperly imposed by the circuit clerk and remand to the trial court for those fines to be reimposed. *People v. Montag*, 2014 IL App (4th) 120993, ¶ 37, 5 N.E.3d 246. Defendant also argues and the State concedes defendant was improperly assessed a \$200 DNA analysis fee.

¶ 17 The following fines are vacated: \$10 arrestee's medical assessment, \$50 court-finance fee, \$5 spinal-cord-research assessment, and the \$100 trauma-fund assessment. See *People v. Jones*, 223 Ill. 2d 569, 593, 861 N.E.2d 967, 981, 985 (2006); *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 46, 54. We also vacate the \$540 traffic/criminal-surchage assessment and the \$216 victims assistance assessment. See *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 122, 135, 16 N.E.3d 13. Both the traffic/criminal surcharge and victims assistance assessment

must be recalculated based on the reimposed fines. See *People v. Williams*, 2013 IL App (4th) 120313, ¶ 21, 991 N.E.2d 914. The \$5 drug-court assessment was adopted by the Champaign County Board as Resolution 6143, to become effective December 31, 2007. As such, its imposition violates *ex post facto* principles. Thus, we also vacate that assessment. See *Warren*, ¶ 107, 16 N.E.3d 13. Last, we vacate the \$200 DNA analysis fee, as the State concedes defendant previously submitted a DNA sample.

¶ 18

### III. CONCLUSION

¶ 19 For the reasons stated, we (1) affirm the trial court's dismissal of defendant's petition for postjudgment relief, (2) vacate the \$200 DNA analysis fee and the \$5 drug-court assessment, and (3) remand for the trial court to reimpose the mandatory fines vacated herein and to impose all other fines mandated by statute in effect at the time of the offense. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 20

Affirmed in part and vacated in part; cause remanded with directions.