



violated the no-contact provision of his probation order. In July 2010, the defendant was released from custody after the trial court found that the State had failed to prove the allegations set forth in its petition to revoke.

¶ 5 In November 2010, in 10-CF-426, the defendant was arrested and charged with aggravated driving under the influence of alcohol (625 ILCS 5/11-501(a)(2), (d)(1)(G) (West 2010)) and driving while license revoked (625 ILCS 5/6-303(a) (West 2010)). In March 2011, the State filed a second petition to revoke the defendant's probation in 09-CF-438, and a jury trial commenced in 10-CF-426. As amended, the State's second petition to revoke alleged that the defendant had violated the terms of his probation by again having contact with the victim of the domestic battery and by committing the traffic offenses charged in 10-CF-426.

¶ 6 Shortly after the State filed its amended petition to revoke the defendant's probation in 09-CF-438, the trial court set bond on the petition, and in 10-CF-426, a jury found the defendant guilty of driving while license revoked and not guilty of aggravated driving under the influence of alcohol. At a subsequent hearing, the trial court found that the State had proven the allegations set forth in its amended petition by a preponderance of the evidence and set the matter for resentencing.

¶ 7 In April 2011, on the defendant's conviction in 10-CF-426, the trial court sentenced him to serve a 90-day jail term with credit for time served. Referencing the defendant's "horrible criminal record" and continued contacts with the victim of the domestic battery, the court then resentenced the defendant to a 54-month term of imprisonment in 09-CF-438. With respect to credit for time served in 09-CF-438, the court took the matter under advisement.

¶ 8 In May 2011, in 09-CF-438, the trial court awarded the defendant credit for the time he spent in custody after his initial arrest and before entering his plea of guilty (12/12/09-

3/17/10), after his arrest on the State's first petition to revoke and before his July 2010 release (5/12/10-7/30/10), and after his bond was set on the State's second petition to revoke and before the formal imposition of the new sentence (3/9/11-5/27/11). The court specifically denied the defendant's request that he be given credit for the time he spent in custody after his arrest on the charges in 10-CF-426 and before bond was set on the State's second petition to revoke (11/13/10-3/8/11), stating that the defendant was "not being held in custody on that [p]etition to [r]evoke at that time." The defendant subsequently filed a timely notice of appeal.

¶ 9

#### ANALYSIS

¶ 10 On appeal, the defendant maintains that the trial court erred in denying him "the additional sentence credit for time spent in custody after his arrest on November 13, 2010." The defendant reasons that even though the State did not file its second petition to revoke until after he had been held for four months on the traffic offenses in 10-CF-426, the court should have nevertheless concluded that he was in "simultaneous custody" when awarding him credit towards his domestic violence conviction in 09-CF-438. We disagree.

¶ 11 By statute, a defendant is entitled to credit against his sentence "for time spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2010). "A defendant held in custody for any part of the day should be given credit against his sentence for that day" (*People v. Smith*, 258 Ill. App. 3d 261, 267 (1994)), and a defendant held on separate charges is "considered to be in simultaneous custody" on those charges for sentence-credit purposes (*People v. Robinson*, 172 Ill. 2d 452, 462 (1996)).

¶ 12 In *People v. Kane*, 136 Ill. App. 3d 1030, 1035 (1985), the defendant was arrested for unlawful possession of cannabis and spent two days in custody before she was released on bail. She later pled guilty to the cannabis charge and was placed on 30 months' probation. *Id.* at 1031. Less than a year after that, she was arrested on an unrelated drug charge and

again spent two days in custody before being released. *Id.* at 1035. Referencing the new drug charge, the State subsequently filed a petition to revoke the defendant's probation. *Id.* Following a hearing, the trial court revoked the defendant's probation and sentenced her to a two-year term of imprisonment on her cannabis conviction with credit for the two days she spent in custody before entering her plea to the underlying charge. *Id.* On appeal, claiming that she was also entitled to credit for the time she spent in custody on the unrelated drug charge that "later became the basis for the revocation of her probation," the defendant argued that she should have received a sentence credit of four days. *Id.* Noting that the defendant was only entitled to receive credit "for time spent in custody as a result of 'the offense for which the sentence was imposed,'" the appellate court disagreed and held that because the sentence in question was imposed on her cannabis conviction, she was not entitled to credit for the two days spent in custody on the "unrelated" drug charge. *Id.* at 1036.

¶ 13 In *People v. Leggans*, 140 Ill. App. 3d 268, 270-71 (1986), the defendant was placed on probation after pleading guilty to a charge of aggravated battery and was later arrested on an unrelated battery charge. Referencing the latter charge, the State subsequently filed a petition to revoke the defendant's probation, and following a hearing, the trial court granted the petition and sentenced the defendant to four years' imprisonment on his aggravated battery conviction. *Id.* On appeal, the defendant argued that he was entitled to credit towards the sentence for his time spent in custody for the unrelated battery. *Id.* at 271. Citing *Kane*, the appellate court disagreed and held that because the defendant's arrest on the battery charge was "unrelated to the aggravated battery proceeding," the defendant was only entitled to receive credit for the time spent in custody from the date that his bond was increased on the State's petition to revoke his probation. *Id.*

¶ 14 In *People v. Woznick*, 209 Ill. App. 3d 1061, 1062-63 (1991), after being sentenced to a two-year term of probation on an aggravated battery conviction, the defendant was

arrested on cannabis and weapons charges, and the State filed a petition to revoke his probation. Upon subsequently revoking his probation, the trial court sentenced the defendant to a four-year term of imprisonment for the aggravated battery offense with credit for time served. *Id.* On appeal, the defendant argued that the trial court should have also awarded him credit for the time he spent in custody on the cannabis and weapons charges because they were alleged in the State's petition to revoke his probation. *Id.* Citing *Kane* and *Leggans*, the appellate court rejected the defendant's claim and noted that a defendant "is not entitled to credit for time served in custody on an unrelated charge." *Id.* The appellate court accordingly held that because the defendant had been sentenced for aggravated battery and not for the "unrelated" cannabis and weapons charges, the trial court had correctly determined that the defendant was only entitled to credit for time served in custody from the date of the filing of the petition to revoke probation to the date of resentencing. *Id.* at 1062-64.

¶ 15 Here, consistent with *Kane*, *Leggans*, and *Woznick*, the trial court rightfully denied the defendant's request that he be given credit for the time he spent in custody after his arrest on the charges in 10-CF-426 and before bond was set on the State's second petition to revoke his probation in 09-CF-438. As the court noted, the defendant was "not being held in custody on that [p]etition to [r]evoke at that time," and as indicated, a defendant is not entitled to credit for time served in custody on unrelated charges.

¶ 16 On appeal, the defendant suggests that *Kane*, *Leggans*, and *Woznick* are no longer valid in light of our supreme court's decision in *People v. Roberson*, 212 Ill. 2d 430 (2004). As the State contends, however, "*Roberson* is readily distinguishable."

¶ 17 In *Roberson*, the defendant was arrested for burglary and posted bond. *Roberson*, 212 Ill. 2d at 433. When he subsequently failed to appear for court, a warrant was issued for his arrest. *Id.* After he was arrested on the warrant, the defendant spent several months in jail

before he was indicted and held on a violation-of-bail-bond charge. *Id.* "[T]he State elected not to prosecute the burglary charge," but the defendant was later convicted of violating his bail bond and was sentenced to four years' imprisonment. *Id.* Noting that when he was arrested and held on the warrant stemming from the burglary charge, the defendant " 'was not in custody on the violation of [the] bail[-]bond charge,' " the trial court denied the defendant's request that he be given sentence credit for the time he spent in custody prior to his arrest on the bail-bond charge. *Id.* On appeal, stating that "once a defendant is arrested for an offense[,] he or she is clearly 'in custody' for that offense even before he or she is formally charged," our supreme court reversed the trial court's judgment and held that, under the circumstances, the defendant's second arrest was an arrest for the bail-bond violation. *Id.* at 439-40. Noting that by statute, a defendant is to be given credit " 'for time spent in custody as a result of the offense for which the sentence was imposed,' " the court observed that because "[the] defendant was arrested for the bail offense, detained, and ultimately convicted and sentenced on that offense," he was entitled to the credit that he sought. *Id.*

¶ 18 Here, when the defendant was arrested in November 2010, he was arrested for committing traffic offenses "unrelated" to the domestic violence proceedings in 09-CF-438. *Woznick*, 209 Ill. App. 3d at 1063; *Leggans*, 140 Ill. App. 3d at 271; *Kane*, 136 Ill. App. 3d at 1036. Thus, it cannot be said that when the defendant was arrested in November 2010, he was arrested for violating his probation. *Cf. Roberson*, 212 Ill. 2d at 439 (explaining that "[i]n factual situations such as the one found in the present case, the second arrest is for the bail[-]bond violation"). For sentence-credit purposes, the defendant was not in custody on the State's second petition to revoke his probation in 09-CF-438 until the petition was filed and bond was set in March 2011. *Woznick*, 209 Ill. App. 3d at 1062; *Leggans*, 140 Ill. App. 3d at 271. At that point, the defendant was "in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2010). We thus conclude that

the trial court correctly calculated the defendant's sentence credit, and we accordingly affirm its judgment.

¶ 19

#### CONCLUSION

¶ 20 For the foregoing reasons, the trial court's judgment is hereby affirmed.

¶ 21 Affirmed.