

the new charges.¹ Instead, the State filed with the information (and again with the case number 11-CF-46) a petition for a writ of *habeas corpus* commanding the IDOC to produce the defendant at the Marion County courthouse on March 29, 2011, "to appear in the above entitled cause." The petition was granted by an order of the circuit court on February 22, 2011, which again referenced case number 11-CF-46. The writ that accompanied the order also referenced case number 11-CF-46, and stated that the IDOC was commanded to produce the defendant "to testify in this case." Also on February 17, 2011, the State filed a petition for arrest card information in 11-CF-46, requesting an order requiring the defendant "to appear at the Marion County Sheriff's Office on a date certain and provide all arrest information and submit to fingerprinting." On March 29, 2011, the court granted the petition for arrest card information. Also on that date, a hearing was held, at which the defendant appeared *pro se*, and at which the defendant was given copies of the charges filed against him in case 11-CF-46 and was appointed counsel. The trial judge also read the charges to the defendant, asked the defendant if he understood each charge, and advised the defendant of the possible penalties associated with the charges. When the judge asked the State if it wanted "any other bond or anything set with respect to this matter," the State answered, "Not at this time, no."

¶ 5 Following the hearing, but still on March 29, 2011, the trial judge entered an order in 11-CF-46, commanding the IDOC to produce the defendant on April 5, 2011, for a preliminary hearing. On March 30, 2011, an arrest card was filed by the State with the circuit court. It listed the date of arrest as February 17, 2011, and the "Court Case Number" as 11-

¹Section 111-2(d) of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-2(d) (West 2010)) states that upon the filing of, *inter alia*, an information in open court, "the court shall immediately issue a warrant for the arrest of" the person charged in the information. It is not clear from the record why no arrest warrant issued in this case.

CF-46. Also on March 30, 2011, counsel for the defendant filed an entry of appearance. Subsequent orders for writs of *habeas corpus* were issued by the trial court, each of which commanded the IDOC to bring the defendant to Marion County, and each of which referenced case number 11-CF-46. The defendant was brought to Marion County by the IDOC on April 5, 2011, April 26, 2011, and July 7, 2011, pursuant to the orders of the court. On September 15, 2011, the defendant entered into a negotiated plea of guilty to one of the nine counts charged. He was sentenced to, *inter alia*, a 10-year term in the IDOC. On January 20, 2012, the defendant filed, *pro se*, a motion to amend the mittimus, claiming he was entitled to presentence credit for the days between March 29, 2011, and September 15, 2011. The motion was denied, and this timely appeal followed.

¶ 6

ANALYSIS

¶ 7 We review *de novo* the denial of a motion to amend a mittimus. *People v. Johnson*, 401 Ill. App. 3d 678, 680 (2010). On appeal, the defendant contends he is entitled to 209 days of presentence credit because he was in the simultaneous custody of the IDOC and Marion County from the date the information was filed (February 17, 2011) to the date he was sentenced (September 15, 2011). The State does not quarrel with the defendant's general premise or the case law supporting it. Instead, the State takes the position that the present case is distinguishable from the cases relied upon by the defendant because in the present case no arrest warrant was issued and no bond was set, and that accordingly the defendant "was not in custody" because the Supreme Court of Illinois has defined "custody" for purposes of sentencing credit as "the legal duty to submit to" legal authorities, not as "actual physical confinement." See *People v. Beachem*, 229 Ill. 2d 237, 252 (2008). Although we agree with the State's definition of custody, we do not agree that the defendant in this case was not in custody prior to sentencing. As detailed above, beginning on February 22, 2011, the trial court issued a series of orders commanding the IDOC to bring the defendant to

Marion County to face the charges filed against him in 11-CF-46. Both the IDOC and the defendant had a legal duty to submit to these orders.

¶ 8 Moreover, although an arrest warrant never issued in this case, the arrest card filed by the State with the trial court on March 30, 2011, listed February 17, 2011, as the date of the defendant's arrest; indeed, absent an arrest, the State had no authority to request, and the trial court had no authority to order, that the defendant provide arrest information and submit to fingerprinting under the statute cited in both the State's petition and the trial judge's order: section 2.1 of the Criminal Identification Act (20 ILCS 2630/2.1 (West 2010)), which specifically states that information and fingerprints are to be provided for "arrests." Having represented to the court, for purposes of obtaining fingerprints and other personal information from the defendant, that the defendant had been arrested in this cause, the State cannot now be heard to claim that he was not arrested. Further evidence that the defendant was in fact "arrested" on the charges filed in 11-CF-46 is found in the fact that at the defendant's first appearance on March 29, 2011, the defendant was given copies of the charges filed against him in case 11-CF-46 and was appointed counsel to assist him as he faced those charges. The trial judge also read the charges to the defendant, asked the defendant if he understood each charge, and advised the defendant of the possible penalties associated with the charges. Under the circumstances presented in this case, we conclude the defendant was in custody on the charges filed in 11-CF-46 from February 17, 2011, to September 15, 2011, and is entitled to presentence credit for 209 days.

¶ 9 CONCLUSION

¶ 10 For the foregoing reasons, we reverse the order of the circuit court of Marion County and, pursuant to Supreme Court Rule 615(b), modify the mittimus in the instant case to provide the defendant with 209 days of presentence credit.

¶ 11 Reversed; mittimus modified to provide defendant with 209 days of presentence credit.