

**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) 130203-U  
NOS. 4-13-0203, 4-13-0204 cons.  
IN THE APPELLATE COURT

**FILED**  
March 18, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
RICHARD T. SMITH,	)	Nos. 11CF945
Defendant-Appellant.	)	12CF483
	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court. Justices Pope and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* When resentencing defendant for domestic battery with a prior domestic-battery conviction and unlawful restraint after revoking his probation, the trial court should have awarded defendant credit for an additional 111 days defendant spent in custody on these charges (in addition to the credit for 20 days previously ordered, for a total of 131 days), but correctly found defendant was not eligible for time spent in custody on unrelated charges that established the basis for the revocation.

¶ 2 Defendant, Richard T. Smith, appeals from the trial court's denial of his motion for *nunc pro tunc*, wherein he sought additional sentencing credit. He claims he is entitled to credit for time he spent in pretrial custody on the underlying charges as well as the time he spent in custody only on the charges that formed the basis for the petition to revoke his probation. We affirm in part, reverse in part, and remand with directions.

¶ 3

## I. BACKGROUND

¶ 4 In July 2011, in Macon County case No. 11-CF-945, the State charged defendant with (1) one count of domestic battery with a prior domestic-battery conviction, a Class 4 felony (720 ILCS 5/12-3.2(a)(2) (West 2010)), for grabbing his girlfriend Markisha Bass's arm after having been convicted of domestic battery in Macon County case No. 10-CM-653 (count I); and (2) one count of unlawful restraint, also a Class 4 felony (720 ILCS 5/10-3(a) (West 2010)), for grabbing her arm and pulling her across the bedroom during the same incident (count II). In August 2011, defendant pleaded guilty to count I in a negotiated plea agreement, wherein in exchange for defendant's plea, the State agreed to recommend a 24-month term of probation, defendant's payment of fees and fines, three days in jail with credit for time served, and successful completion of the Batterers Intervention Program. The State also agreed to dismiss count II.

¶ 5 On April 5, 2012, the State filed a petition to revoke defendant's probation, alleging he committed "the new offense[s] of aggravated domestic battery, unlawful restraint, and domestic battery with a prior domestic battery conviction, as alleged in Macon County cause [No.] 12-CF-483." Also on April 5, 2012, the State filed these three new charges against defendant (in a separate criminal case as indicated) as a result of the March 31, 2012, altercation between defendant and Bass. Defendant was arrested on March 31, 2012, and remained in custody until resentencing. In the new charges, the State alleged defendant strangled Bass (the basis for the aggravated-domestic-battery count), detained her on the couch (the basis for the unlawful-restraint count), and repeatedly struck her after having been previously convicted of domestic battery in Macon County case No. 11-CF-945 (the basis for the domestic-battery count).

¶ 6 On June 5, 2012, the trial court conducted a hearing on the State's petition to revoke probation where Bass testified about the March 31, 2012, domestic incident and the parties stipulated as to the investigating officer's testimony. After the presentation of the State's evidence, the court accepted the State's exhibits and took judicial notice of defendant's prior domestic-battery conviction in Macon County case No. 11-CF-945. Defendant presented no evidence. The court found the State had proved only the allegations supporting the aggravated-domestic-battery and unlawful-restraint charges by a preponderance of the evidence. The court ordered the preparation of a presentence investigation report (PSI).

¶ 7 At the July 25, 2012, resentencing hearing, the trial court questioned whether the custody dates of July 1, 2011, through July 20, 2011, were correct for sentencing credit purposes. Defense counsel confirmed those dates. After considering the PSI, the statutory sentencing factors, defendant's statement in allocution, and recommendations of counsel, the court resentenced defendant to five years and six months in prison with credit for time served as indicated (20 days). On the State's motion, the court dismissed Macon County case No. 12-CF-483.

¶ 8 On October 2, 2012, defendant filed a *pro se* motion for order *nunc pro tunc* in both cases (Nos. 11-CF-945 and 12-CF-483), alleging he was entitled to sentencing credit of 120 days. On October 5, 2012, the trial court denied defendant's motion, finding the ordered sentencing credit was correct, as "[t]here is no credit for time served in custody in [case No.] 12-CF-483 because it was dismissed."

¶ 9 On March 11, 2013, defendant filed a late notice of appeal and the trial court appointed the Office of the State Appellate Defender (OSAD) to represent defendant. In June 2013, the supreme court issued a supervisory order directing this court to accept defendant's late

notice of appeal and address the merits of defendant's appeal. Because his notice of appeal included both trial court numbers (case Nos. 11-CF-945 and 12-CF-483), this court assigned each appeal a docket number (Nos. 4-13-0203 and 4-13-0204, respectively). We have consolidated the appeals and consider the merits as follows.

¶ 10

## II. ANALYSIS

¶ 11 Defendant contends the case should be remanded so the trial court could award him additional sentencing credit of 5 days, for a total of 136 days for time spent in custody. The State concedes defendant is entitled to 131 days but argues he is not entitled to the additional 5 days: the time spent in custody between March 31, 2012 (the day he was arrested on the offenses which gave rise to both the new criminal case No. 12-CF-483 and the petition to revoke his probation) and April 4, 2012.

¶ 12 Our review of the trial court's order denying defendant the requested sentencing credit is *de novo* because it involves construing the language of the applicable sentencing-credit statutes. *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 26. After our careful review of the record, we affirm in part, reverse in part, and remand with directions.

¶ 13 Section 5-4.5-100 of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-100 (West 2012)) became effective on June 22, 2012, approximately one month prior to defendant's resentencing hearing. Though there were minor language changes in the amended statute, for the purposes of our analysis in this case, the new statute does not vary in substance from the prior version, codified at 730 ILCS 5/5-8-7 (West 2008). Subsection (b) of the statute provides that 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.*" (Emphasis added.) 730 ILCS 5/5-4.5-100(b) (West 2012).

¶ 14 At resentencing, the trial court awarded defendant 20 days of sentencing credit for time he spent in custody between July 1, 2011, and July 20, 2011, for the charges in case No. 11-CF-945. The State concedes defendant is entitled to additional credit of 111 days for time he spent in custody between April 5, 2012 (the date the petition for revocation and the new charges were filed) and July 25, 2012 (the date of resentencing). However, defendant contends he is entitled to an additional five days for time he spent in custody between March 31, 2012 (the date he was arrested on the new charges) and April 4, 2012 (the day before the petition to revoke was filed). The State argues those disputed five days when defendant was detained only on the new charges in case No. 12-CF-483 (the case that was ultimately dismissed) are not creditable toward his sentence in case No. 11-CF-945. We agree.

¶ 15 A defendant " 'is not entitled to credit for the time which [ ]he spent in custody on [an] unrelated offense.' " *People v. Woznick*, 209 Ill. App. 3d 1061, 1063 (1991) (quoting *People v. Kane*, 136 Ill. App. 3d 1030, 1036 (1985)). That is, the statute " 'only requires the granting of credit for time spent in custody as a result of the offense for which the sentence was imposed.' " *Id.* The *Kane* court determined that, if a sentence in question was imposed on the defendant's initial conviction, the defendant was not entitled to credit for the number of days spent in custody on any unrelated charges. *Kane*, 136 Ill. App. 3d at 1036.

¶ 16 The trial court awarded defendant credit for the 20 days he spent in custody on the charges in case No. 11-CF-945 between July 1, 2011, and July 20, 2011. The court should have also awarded defendant the additional 111 days he spent in custody between the filing of the petition to revoke and sentencing, or April 5, 2012, to July 25, 2012. Therefore, we find defendant is entitled to credit for 131 days spent in pretrial custody. Defendant is not entitled to sentencing credit for the five days defendant spent in custody on the unrelated charges in case

No. 12-CF-483 between March 31, 2012, and April 4, 2012, after his arrest on those latter charges.

¶ 17

### III. CONCLUSION

¶ 18 For the reasons stated, we affirm in part, reverse in part, and remand with directions for the trial court to amend the sentencing judgment to reflect credit for 131 days of time spent in pretrial custody on the underlying offense charged in Macon County case No. 11-CF-945. Because the State has successfully defended a portion of the criminal judgment, we grant the State its statutory assessment of \$50 against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978)).

¶ 19

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