

NOTICE
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2014 IL App (5th) 130427-U

NO. 5-13-0427

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Jackson County.
)	
v.)	No. 10-CF-344
)	
BRANDON M. PICKLES,)	Honorable
)	William G. Schwartz,
Defendant-Appellant.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in its calculation of defendant's credit for time served when it did not credit defendant for time served from the date he was served an arrest warrant by one county while he was simultaneously being held in custody by another county on an unrelated charge.

¶ 2 This appeal is taken from the trial court's dismissal of defendant Brandon M. Pickles's petition for postconviction relief. On appeal defendant asserts he is entitled to credit for time served against his Jackson County sentence from June 25, 2010, the date he was charged and served an arrest warrant by Jackson County, until April 29, 2011, the date he entered a fully negotiated plea with the State concerning the Jackson County charge, during which time defendant was being held in the custody of Williamson County

for an unrelated charge. We agree with defendant, as our supreme court has routinely held that when a defendant is simultaneously held in presentence custody for two unrelated charges, the defendant is entitled to credit for time served on both offenses.

¶ 3

BACKGROUND

¶ 4 On April 2, 2010, Carbondale police officers were dispatched to the Walgreen's in Carbondale, Jackson County, where they met with a pharmacist who was on duty at the time. The pharmacist indicated she was behind the counter when she was approached by defendant, who appeared to be armed with a knife. Defendant then jumped over the counter, told the pharmacist he was addicted to Oxycontin, and demanded that the pharmacist provide him with Oxycontin pills. The pharmacist provided defendant with approximately 1,700 Oxycontin pills, and defendant left.

¶ 5 Defendant was then developed as a suspect in Williamson County for two similar occurrences, and was arrested on June 19, 2010. Defendant pled guilty in Williamson County in case number 10-CF-223. While being held in the Williamson County jail, defendant was charged with armed robbery in Jackson County for the incident that occurred at the Walgreen's in Carbondale. Defendant was served with the armed robbery charge and arrest warrant by Jackson County on June 25, 2010.

¶ 6 Defendant remained in Williamson County's custody until his first appearance in Jackson County on November 10, 2010. On April 29, 2011, defendant entered into a fully negotiated plea with the State through which the State amended the armed robbery charge to aggravated robbery and agreed to a 12-year term of imprisonment in the Department of Corrections in exchange for defendant's guilty plea.

¶ 7 After entering a plea of guilty, the trial court awarded defendant 151 days of credit for time served. The mittimus indicated defendant should receive day-for-day good-time credit and the charge should run concurrent to the Williamson County conviction.

¶ 8 On August 23, 2011, defendant filed a motion *nunc pro tunc* requesting that he be given additional credit for time served. Defendant argued he was entitled to credit for time served from the date of his arrest in Williamson County on June 19, 2010.

¶ 9 The State argued the mittimus should be corrected to reflect credit for time served from November 10, 2010, the date of defendant's first appearance in Jackson County. The State asserted defendant was not entitled to credit for time served prior to November 10, 2010, because he had not appeared in Jackson County before that date.

¶ 10 On April 13, 2012, the trial court entered an order adopting the State's calculations and awarded defendant 172 days of credit for time served from November 10, 2010, until April 29, 2011. These calculations reflected the date of defendant's first appearance in Jackson County and the date defendant entered into a fully negotiated plea with the State, respectively.

¶ 11 On May 25, 2012, defendant filed a motion to amend the mittimus requesting that he be awarded credit for time served from June 24, 2010, rather than November 10, 2010, until his sentence date. On November 13, 2012, the trial court indicated the issue had already been resolved and denied defendant's motion.

¶ 12 On July 17, 2013, defendant filed a postconviction petition requesting credit for time served from June 19, 2010, the date he was arrested in Williamson County, until April 29, 2011, the date he entered into a fully negotiated plea with the State concerning

the Jackson County charge. On July 18, 2013, the trial court denied defendant's postconviction petition after finding it frivolous and without merit. Defendant timely appeals.

¶ 13

ANALYSIS

¶ 14 On appeal defendant alleges he is entitled to credit for time served from June 25, 2010, the date he was served with the armed robbery charges and arrest warrant by Jackson County, until April 29, 2011, the date defendant entered into a fully negotiated plea with the State for the Jackson County charge, against his Jackson County sentence while he was simultaneously serving time in the Williamson County jail on pretrial detention. The State contends defendant should not receive any additional credit for time served as a result of his alleged June 25, 2010, arrest on the Jackson County warrant.

¶ 15 We agree with defendant that he should have been awarded credit for time served from the date he was served with an arrest warrant by Jackson County while being held in Williamson County on unrelated charges. For the following reasons, we reverse the judgment of the circuit court of Jackson County.

¶ 16 Defendant was charged with armed robbery and served an arrest warrant by Jackson County on June 25, 2010. On said date, defendant was being held in custody in Williamson County for unrelated charges. Defendant asserts that if he were not being held in Williamson County at the time he was charged and served an arrest warrant by Jackson County, he would have been immediately transferred to the Jackson County jail. Therefore, defendant argues he is entitled to credit for time served from June 25, 2010, the date he was charged and served by Jackson County, until he was sentenced by

Jackson County on April 29, 2011, because he was simultaneously being held on both the Williamson County and Jackson County charges. We agree.

¶ 17 Regarding credit for time served, the "offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for the number of days spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2012). The offender should also "receive credit against his sentence for any part of a day that he is held in custody." *People v. Peterson*, 372 Ill. App. 3d 1010, 1019, 868 N.E.2d 329, 336 (2007).

¶ 18 Our supreme court has determined that when a defendant is simultaneously in presentence custody on two unrelated charges, section 5-8-7(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-8-7(b) West 1992)) entitles him or her to credit for time served on both offenses. *People v. Johnson*, 401 Ill. App. 3d 678, 681, 937 N.E.2d 190, 192 (2010) (citing *People v. Robinson*, 172 Ill. 2d 452, 462-63, 667 N.E.2d 1305, 1309-10 (1996)).

¶ 19 In *Robinson* the supreme court interpreted credit for time served pursuant to former section 5-8-7(b) of the Code, which is currently section 5-4.5-100(b) of the Code (730 ILCS 5/5-4.5-100(b) (West 2012)). *Robinson* involved a defendant who was released on bond for a murder charge and then arrested a few days later on an unrelated armed robbery charge and taken back into custody. Once back in custody for the unrelated armed robbery charge, the State increased the defendant's bond in the murder case, which he then surrendered.

¶ 20 The issue presented before the court was not whether the defendant was in pretrial custody for the armed robbery charge, but rather whether the defendant was also in custody on the murder charge during the relevant period. In concluding that the defendant was in custody on both charges, the court indicated the following:

"[W]hen a defendant is out on bond on one offense and is subsequently arrested on a second offense, that defendant is returned to custody on the first offense when his bond is withdrawn or revoked. [Citation.] When that event occurs, the defendant is then considered to be in simultaneous custody on both charges. [Citation.]" *Robinson*, 172 Ill. 2d at 459, 667 N.E.2d at 1308 (citing *People v. Arnhold*, 115 Ill. 2d 379, 383-84, 504 N.E.2d 100, 101-02 (1987)).

¶ 21 The supreme court in *Robinson* noted that an offender shall be given credit on 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 2012) (formerly 730 ILCS 5/5-8-7(b) (West 1992)). The court determined this provision entitles a defendant to sentencing credit for both offenses when he is simultaneously being held in presentence custody on two unrelated charges, specifically noting that "[e]ven if defendant had not been incarcerated on the armed robbery charge, he would have remained in custody on the murder offense as a result of his failure to post bond." *Robinson*, 172 Ill. 2d at 459, 667 N.E.2d at 1308.

¶ 22 Courts have since extended the rule of *Robinson*. *People v. Spencer*, 347 Ill. App. 3d 483, 807 N.E.2d 1228 (2004), involved a defendant who was in custody serving a sentence for one crime at the same time he was being held in presentence custody for an unrelated charge. This court awarded the defendant credit for time served against the

new sentence for time spent in simultaneous custody, reasoning that the defendant would have still remained in custody for the case at issue if he were not serving his sentence on the earlier charge. The court further stated that the issue was not the defendant's status in the unrelated case, but whether he remained in custody on the charge in the instant case. *Spencer*, 347 Ill. App. 3d at 490, 807 N.E.2d at 1234.

¶ 23 Another similar case is *People v. Chamberlain*, 354 Ill. App. 3d 1070, 822 N.E.2d 914 (2005). In *Chamberlain* the court determined that a defendant who was convicted of battery was entitled to 15 days' credit for time served for the time between when he was charged with battery and when he was transferred from a youth center where he was serving a sentence for an unrelated offense in the county jail. The court reasoned that once the defendant was charged with the more recent battery offense, he was simultaneously serving his prior sentence and was also in presentence custody for the battery offense. *Chamberlain*, 354 Ill. App. 3d at 1075, 822 N.E.2d at 918.

¶ 24 The State claims the applicable statute governing defendant's sentence credit is section 5-4.5-100(c) of the Code (730 ILCS 5/5-4.5-100(c) (West 2010)) because defendant was arrested on one charge and prosecuted on another charge, and that section 5-4.5-100(b) does not apply. The State claims defendant is not entitled to any credit for time served from June 25, 2010, to April 29, 2011, because the plain language of section 5-4.5-100(c) provides that an "offender arrested on one charge and prosecuted on another charge for conduct that occurred prior to his or her arrest shall be given credit on the determinate sentence *** for time spent in custody under the former charge not credited against another sentence." 730 ILCS 5/5-4.5-100(c) (West 2010). We disagree.

¶ 25 In the instant case, defendant was charged and pleaded guilty to robbing the Carbondale Walgreen's for the purpose of taking Oxycontin pills. Defendant then entered a guilty plea after reaching a plea agreement with the State that amended the armed robbery charge to aggravated robbery. The difference between the arresting charge and the conviction was whether defendant carried a knife or claimed to have a knife.

¶ 26 The State's argument that defendant was arrested on one charge and prosecuted on another is mistaken, as defendant was not in custody on one charge and prosecuted on another. A single offense, not multiple offenses, led to defendant's arrest and conviction. Jackson County charged defendant with armed robbery, but prosecuted defendant for aggravated robbery after reaching a plea agreement between the parties. Moreover, it has been held that subsection (c) "was added to protect the right secured to a defendant under subsection (b), and that it did so by preventing the State from depriving a defendant of credit for jail time through technical evasion." *People v. Kane*, 136 Ill. App. 3d 1030, 1036, 484 N.E.2d 296, 300 (1985). Two separate charges are not involved in this case that make section 5-4.5-100(b) inapplicable, and defendant should not be deprived of credit for jail time from the date he was served an arrest warrant by Jackson County.

¶ 27 The State also asserts defendant should not receive additional credit for time served because he agreed to forego it as part of his plea agreement. The State indicates a "defendant has the right to first request sentencing credit at any time unless, as here, he agreed to forego it as part of a plea or other sentencing agreement." *People v. Williams*, 384 Ill. App. 3d 415, 417, 892 N.E.2d 129, 131 (2008). In his reply brief, defendant concedes that a defendant may waive his right to credit for time served as part of a plea

agreement. However, as defendant states in his reply brief, no such waiver took place in the plea agreement involved in this case.

¶ 28 For credit for time served to be waived, the record must be "clear that the defendant expressly agreed to a plea agreement that did not include a proper calculation of the credit." *Johnson*, 401 Ill. App. 3d at 683, 937 N.E.2d at 194. In the instant case, the record does not indicate that such an express agreement took place, and the State fails to cite anywhere in the record indicating defendant expressly agreed to a calculation of credit for time served that he knew was inaccurate. Accordingly, defendant did not waive credit for time served as part of the plea agreement he reached with the State.

¶ 29 The State's final argument asserts defendant should not receive additional credit for time served because defendant's postconviction attempt to relitigate the issue of his sentence credit is barred by collateral estoppel. In its brief the State cites the three requirements of collateral estoppel: (1) the court rendered a final judgment in the prior case, (2) the party against whom estoppel is asserted was a party or in privity with a party in the prior case, and (3) the issue decided in the prior case is identical with the one presented in the instant case. *People v. Tenner*, 206 Ill. 2d 381, 396, 794 N.E.2d 238, 247 (2002). The State contends the three requirements are met in the instant case and support summary dismissal. We disagree. The State's argument concerning collateral estoppel is mistaken, as the general rules of collateral estoppel do not apply to credit for time served.

¶ 30 A defendant is entitled to credit against his prison term for each day or part of a day spent in jail prior to the imposition of a sentence. 730 ILCS 5/5-4.5-100(b) (West 2012). It has been held that it is mandatory pursuant to section 5-4.5-100(b) of the Code,

formerly section 5-8-7(b), that a trial court award credit to a defendant for his presentence incarceration. *People v. Andrews*, 365 Ill. App. 3d 696, 699, 850 N.E.2d 888, 891 (2006). "Because sentence credit for time served is mandatory, such a claim of error cannot be waived [citation], and an amended or corrected mittimus may be issued at any time [citation]." *People v. Anderson*, 2012 IL App (1st) 103288, ¶ 35, 977 N.E.2d 222.

¶ 31 Moreover, this court has the authority pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967) to "modify the trial court's order to correct what amounts to a clerical error to give the defendant credit for all his presentence custody." *Andrews*, 365 Ill. App. 3d at 699, 850 N.E.2d at 891.

¶ 32 In the instant case, we find the trial court erred in not awarding defendant credit for time served against his Jackson County sentence from the date he was served an arrest warrant by Jackson County. Because an amended mittimus may be issued at any time and this court has authority to modify the trial court's order to credit defendant for all his presentence custody relating to the Jackson County charge, the State's argument concerning collateral estoppel fails.

¶ 33 CONCLUSION

¶ 34 For the reasons stated herein, we reverse the judgment of Jackson County denying defendant's motion to amend the mittimus requesting that he be given credit for time served in Williamson County from June 24, 2010, until his sentence date in Jackson County on April 29, 2011. We also modify the mittimus to reflect that defendant be awarded credit for time served against his Jackson County sentence from June 25, 2010,

the date he was served with the charges and arrest warrant by Jackson County, until his sentencing date in Jackson County on April 29, 2011.

¶ 35 Reversed; mittimus modified.