

**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).

**FILED**

October 18, 2016  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2016 IL App (4th) 140879-U

NO. 4-14-0879

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
JACOB F. ROACH,	)	No. 13CF61
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Knecht and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court vacated the trial court's judgment denying defendant's motion to correct the mittimus and remanded with directions for the court to dismiss defendant's motion for lack of jurisdiction.

¶ 2 In January 2013, defendant, Jacob F. Roach, was involved in a crime spree across three Illinois counties: Livingston, LaSalle, and Grundy. While in the custody of LaSalle County, defendant was charged in Livingston County with three counts of theft (720 ILCS 5/16-1(a)(1) (West 2012)), two counts of burglary (720 ILCS 5/19-1(a) (West 2012)), one count of possession of a stolen or converted motor vehicle (625 ILCS 5/4-103(a)(1) (West 2012)), and one count of criminal damage to property (720 ILCS 5/21-1(a) (West 2012)). Defendant pleaded guilty, and in exchange, the State dismissed the three theft counts and agreed to request a

sentence no greater than 12 years' imprisonment. In October 2013, the trial court sentenced defendant to 10 years' imprisonment without presentence credit, with his sentence running concurrent to his sentences in LaSalle and Grundy Counties. Defendant filed a motion to reconsider the sentence and argued, since he was never in custody of Livingston County, he was not provided an opportunity to earn presentence credit. The court denied the motion. In July 2014, defendant filed a motion to correct the mittimus, arguing his mittimus failed to reflect earned presentence credit. The court denied the motion and this appeal followed. For the reasons that follow, we vacate the trial court's judgment and remand with directions to dismiss defendant's motion to correct the mittimus for lack of jurisdiction.

¶ 3

#### I. BACKGROUND

¶ 4

During January 2013, citizen complaints yielded multiple reports of theft in Livingston, LaSalle, and Grundy Counties. The Pontiac police department (located in Livingston County) believed defendant was responsible for the crimes.

¶ 5

On January 29, 2013, the Pontiac police department sought the assistance of the Livingston County sheriff's emergency response unit with the search of a residence. The Pontiac police department believed defendant was inside his mother's home and was aware of outstanding warrants for defendant's arrest issued by LaSalle County and the Illinois Department of Corrections. The Pontiac police department contacted defendant's mother and she allowed them to search her home. The Pontiac police announced their presence and asked that anyone inside the home come out with their hands in the air. No one exited. The police then announced they would send a canine into the home. A few seconds later, defendant emerged from the home where police met him and placed him in custody. The next day, Livingston County police

interviewed defendant at the LaSalle County jail, where he was in custody.

¶ 6 On March 11, 2013, defendant was charged in Livingston County with three counts of theft (720 ILCS 5/16-1(a)(1) (West 2012)), two counts of burglary (720 ILCS 5/19-1(a) (West 2012)), one count of possession of a stolen or converted motor vehicle (625 ILCS 5/4-103(a)(1) (West 2012)), and one count of criminal damage to property (720 ILCS 5/21-1(a) (West 2012)). The following day, a summons issued requiring defendant to appear in court in Livingston County for arraignment on May 7, 2013.

¶ 7 Defendant remained in the custody of LaSalle County during the pendency of the proceedings in the present case. On August 6, 2013, defendant entered a plea of guilty in his Livingston County case. In exchange for his plea, the State dismissed the three theft counts and agreed to cap its sentencing request at 12 years' imprisonment. The trial court sentenced defendant to 10 years' imprisonment. The trial court ordered defendant's sentence to run concurrent to the sentences he received in LaSalle and Grundy Counties. Defendant received a 10-year sentence in both LaSalle County case No. 13-CF-70 and Grundy County case No. 13-CF-40, in addition to presentence credit of 254 and 242 days respectively. During the proceedings in Livingston County, when addressing presentence credit, the court stated, "To my knowledge, I don't think you've got [*sic*] any time on this case." Thus, the trial court declined to award defendant any presentence credit.

¶ 8 Subsequently, defendant filed a motion to reconsider the sentence, arguing, "[b]ecause he was never in the custody of Livingston County, no bond on these charges was ever set, and [he] did not have an opportunity to earn credit towards a potential sentence of incarceration." The trial court denied defendant's motion to reconsider and stated, "I recognize

[defendant] was not in custody on this case. He did not accrue any incarceration credits for the time he spent in custody of LaSalle County. I therefore did not give him any incarceration credits on his sentence. That was a factor I was aware of at the time of sentencing, and there has been nothing argued here today that would cause me to reconsider my original sentence."

¶ 9 On July 3, 2014, nearly six months after the trial court denied his motion to reconsider, defendant filed a motion to correct the mittimus, arguing his mittimus failed to reflect earned presentence credit. Although directed by the trial court to respond to defendant's motion, the State failed to do so. Eventually, the trial court entered an order denying the motion stating, "Defendant was in custody in LaSalle County during the pendency of this case on the LaSalle County charges. A review of the court file indicates that the defendant appeared via summons in this case. He was never in custody on the Livingston County case \*\*\* [therefore], he is not entitled to incarceration credit \*\*\*."

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues he is entitled to 246 days of presentence credit for time spent in custody from January 29, 2013, to October 2, 2013 (the date of his arrest to the date of sentencing). In the alternative, defendant asserts he is entitled to 205 days of presentence credit for time spent in custody from March 11, 2013, to October 2, 2013 (the date he was charged to the date of sentencing). In the event he is denied the credit previously mentioned, defendant suggests at a minimum he is entitled to 57 days of presentence credit for time spent in custody (the date of his guilty plea to the date of sentencing).

¶ 13 The State argues the trial court lacked jurisdiction to consider defendant's motion

to correct the mittimus because he filed his motion more than 30 days after entry of the court's judgment. The State further contends, because defendant's notice of appeal was filed more than 30 days after entry of the order disposing of defendant's motion to reconsider, this court does not have jurisdiction. Finally, the State argues that even if this court has jurisdiction to consider the denial of defendant's motion to correct the mittimus, defendant is not entitled to presentence credit because he was never in the custody of Livingston County. In response, defendant argues the trial court retains jurisdiction to correct nonsubstantial matters of inadvertence or mistake, which would include amendment of the mittimus. See *People v. Nelson*, 2016 IL App (4th) 140168, ¶ 39, 49 N.E.3d 1007 (citing *Baker v. Department of Corrections*, 106 Ill. 2d 100, 477 N.E.2d 686 (1985)). Thus, defendant asserts his notice of appeal filed within 30 days after the denial of his motion to correct the mittimus was timely and secures this court's jurisdiction.

¶ 14 Generally, a trial court loses jurisdiction over a criminal matter after expiration of the 30-day period for filing postjudgment motions. *People v. Flowers*, 208 Ill. 2d 291, 802 N.E.2d 1174 (2003). As pointed out by defendant, an exception to this general rule is that the trial court retains jurisdiction to correct nonsubstantial matters of inadvertence or mistake. However, this exception does not empower the trial court to alter matters of substance. See *Southland Corp v. Village of Hoffman Estates*, 130 Ill. App. 2d 311, 264 N.E.2d 264 N.E. 2d 451 (1970). Moreover, although "Illinois courts have held that a trial court's lack of jurisdiction is not a complete bar to the exercise of jurisdiction by the appellate court[.]" the appellate court is restricted to considering only the issues of the trial court's jurisdiction. *People v. Bailey*, 2014 IL 115459, ¶ 29, 4 N.E.3d 474.

¶ 15 In the case at bar, defendant's motion to correct the mittimus did not seek the

correction of a nonsubstantial matter of inadvertence or mistake. Instead, defendant asked the trial court to *modify* the court's judgment and grant him presentence credit, to which it previously determined he was not entitled. The court's judgment was unambiguous in finding defendant was not entitled to presentence credit because he was never arrested on his Livingston County case and was never in the custody of Livingston County. Because defendant could not establish he was seeking to correct a nonsubstantial matter of inadvertence or mistake, the trial court lacked jurisdiction to consider defendant's motion.

¶ 16 Defendant relies on *People v. White*, 357 Ill. App. 3d 1070, 831 N.E. 2d 657 (2005), for support of his position that the trial court had jurisdiction to consider his motion to correct the mittimus. However, *White* is distinguishable. In *White*, the Third District held, a defendant arrested on a parole warrant issued because of new charges is entitled, when sentenced on the new charges, to presentence credit from the day of his arrest on the parole warrant. The appellate court reasoned this was appropriate under section 5-8-7(b) of the Unified Code of Corrections (730 ILCS 5/5-8-7(b) (West 2002)), which requires offenders be given credit for time spent in custody as a result of the offense for which the sentence was imposed. As the defendant's time in custody resulted from the new charges, he was entitled to the presentence credit when sentenced on the new offense. Pursuant to the trial courts continuing jurisdiction to correct nonsubstantial matters of inadvertence or mistake, the trial court could correct its mistake and give the defendant the presentence credit to which he was entitled.

¶ 17 Here, there was no such mistake. Instead, the trial court consistently declined to give defendant presentence credit in light of the facts that he was never arrested on his Livingston County case and he could not show he was ever in custody of Livingston County.

Given the posture of defendant's motion was to seek to change the court's decision, not correct a nonsubstantial matter of inadvertence or mistake, the trial court did not have jurisdiction to entertain his motion. In light of the trial court's lack of jurisdiction, this court lacks jurisdiction to consider defendant's motion to correct the mittimus. *People v. Bailey*, 2014 IL 115459, ¶ 29, 4 N.E.3d 474. Thus, we vacate the trial court's judgment and remand with directions to dismiss defendant's motion to correct the mittimus for lack of jurisdiction. See *Bailey*, 2014 IL 115459, ¶ 29, 4 N.E.3d 474.

¶ 18

### III. CONCLUSION

¶ 19 For the reasons stated, we vacate the trial court's judgment and remand with directions to dismiss defendant's motion to correct the mittimus for lack of jurisdiction.

¶ 20 Vacated and remanded with directions.