2016 IL App (5th) 140548-U

NO. 5-14-0548

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	Nos. 10-CF-1093 & 11-CF-55
	)	
SUNTEZ PASLEY,	)	Honorable
	)	John Baricevic,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's motions to modify the mittimus were properly denied because the defendant is not entitled to credit for presentence incarceration against multiple sentences when those sentences are served consecutively.

¶ 2 The defendant, Suntez Pasley, appeals the circuit court's denial of his motions to modify the mittimus in two cases. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a motion to withdraw as counsel, alleging that there is no merit to the appeal. See *Pennsylvania v. Finley*, 481 U.S. 551 (1987); *People v. McKenney*, 255 Ill. App. 3d 644 (1994). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any other

document supporting his appeal. The defendant did not file a response. We considered OSAD's motion to withdraw as counsel on appeal. We examined the entire record on appeal and found no error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of St. Clair County.

¶ 3 BACKGROUND

¶ 4 On September 16, 2013, the defendant pleaded guilty to aggravated robbery in 10-CF-1093 and possession of a controlled substance in a penal institution in 11-CF-55. The State and the defendant requested the court sentence the defendant to six years on each conviction to be served consecutively. At the plea hearing, the court addressed the defendant regarding presentence incarceration credit against his sentences. Speaking of the Illinois Department of Corrections (IDOC), the court stated: "They'll only give you credit on one or the other of them when you get there. Okay? So, you don't get double on–You don't get to count both of them while you're there. You just get credit for one or the other." Later in the colloquy the defendant stated: "[I]f I can have the time credited toward the 2010 case, that way I can get in to a drug program on the '11 case ***." Speaking to the defendant later in the hearing, the court stated: "I can order [IDOC] to give you credit for the time served in the County Jail, and I will do that, but their application of it to the first case or the second case is ultimately their decision. Understand That?" The defendant replied that he did understand.

¶ 5 On September 26, 2014, the defendant filed a motion to amend the mittimus in each case, asking the circuit court to amend the mittimus so that he would receive credit

for time served in presentence custody against both sentences. He argued that while he was in custody on 10-CF-1093, he was also in custody on 11-CF-55 and should receive double credit for the days he was in custody on both charges. He further argued that he did not receive the benefit of the bargain in his plea and requested the circuit court reduce his sentence by 996 days, the amount of time he was in custody on both cases. The circuit court denied the motions, and the defendant appealed.

¶ 6 ANALYSIS

¶ 7 Generally, a defendant is entitled to credit against his sentence for time spent in presentence custody for the crime for which he is sentenced. 730 ILCS 5/5-4.5-100(b) (West 2008). But it is section 5-8-4 of the Unified Code of Corrections (Code), not 5-4.5100(b), that addresses how consecutive sentences are to be calculated. 730 ILCS 5/5-8-4, 5-4.5-100(b) (West 2008). Relevant to this case, section 5-8-4 states that consecutive sentences of determinate length shall be treated as one determinate sentence equal in length to the addition of the lengths of the two determinate sentences. 730 ILCS 5/5-8-4(g)(1) (West 2008). Additionally, the Code states that the offender shall receive credit against the single sentence "for all time served in an institution since the commission of the offense or offenses and as a consequence thereof ***." 730 ILCS 5/5-8-4(g)(4) (West 2008).

¶ 8 The Illinois Supreme Court dealt with this exact situation in *People v. Latona*, 184 Ill. 2d 260 (1998). The statutes involved have been renumbered since the *Latona* decision, but the language of the statute stayed the same, with the exception of the addition of a heading. (730 ILCS 5/5-8-7(b) is now found at 730 ILCS 5/5-4.5-100(b).)

The *Latona* court stated "to allow an offender sentenced to consecutive sentences two credits [for each day spent in custody]–one for each sentence–not only contravenes the legislative directive that his sentence shall be treated as a 'single term' of imprisonment, but also, in effect, gives that offender a double credit ***. That cannot be what the legislature intended." *Latona*, 184 Ill. 2d at 271. "Allowing offenders sentenced to consecutive sentences a double credit for each day of actual custody would frustrate the legislature's clearly expressed intent." *Id.* "Defendants must be given credit for all the days they actually served, but no more." *Id.* at 272. Therefore, the defendant is not entitled to a reduction in his sentence for the days he was in presentence custody on both cases.

¶ 9 The defendant's contention that he did not receive the benefit of his plea bargain is without merit. The transcripts of the plea hearing indicate that the defendant knew he would receive credit against only one of his sentences. In fact, he understood this well enough that he asked that the credit be given against one of the two convictions. The defendant knew the deal he reached in exchange for his plea included credit against only one sentence. He cannot now claim otherwise. The defendant received the benefit of his bargain. The defendant claims that *People v. Lenoir*, 2013 IL App (1st) 113615, and *People v. Clark*, 2011 IL App (2d) 091116, require a different outcome. They do not. In *Lenoir* and *Clark*, the defendants were actually promised double credit in exchange for their pleas. Since that was not possible, the appellate court reduced the defendants' sentences by the amount of double credit they were promised. Here, the defendant was

explicitly told he would not receive double credit and acknowledged he understood that. *Lenoir* and *Clark* are inapplicable to this case.

¶ 10 The defendant also cited to *People v. Anderson*, 407 Ill. 503 (1950), in asking the circuit court to credit him with time served. It is unclear how the defendant believed *Anderson* advanced his case. *Anderson* discussed issues of sentencing and appellate records that predate our current statutory system. As discussed above, the statutory provisions applicable to the defendant preclude him from receiving double credit for presentence incarceration.

¶ 11 CONCLUSION

¶ 12 The circuit court properly denied the defendant's motions. OSAD's motion for leave to withdraw is granted, and the circuit court of St. Clair County's order is affirmed.

¶ 13 Motion granted; judgment affirmed.