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2017 IL App (3d) 140950-U

Order filed March 17, 2017  
Modified upon denial of rehearing June 21, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois
Plaintiff-Appellee,	)	
v.	)	Appeal Nos. 3-14-0950
	)	3-14-0951
	)	3-14-0952
SHEMICA WEBB, a/k/a SHEMICA BUTLER,	)	Circuit Nos. 07-CF-2142
	)	09-CF-0414
	)	09-CF-1188
Defendant-Appellant.	)	
	)	Honorable
	)	Edward Burmila, Jr.
	)	Judge, Presiding

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JUSTICE O'BRIEN delivered the judgment of the court.  
Presiding Justice Holdridge and Justice McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Defendant was not entitled to presentence custody for time served in prison where she was not in presentence custody on the offense for which sentencing credit was sought.

¶ 2 The trial court denied defendant Shemica Webb<sup>1</sup> pretrial custody credit for time she spent in prison serving a sentence on another offense. We affirm.

¶ 3 FACTS

¶ 4 Defendant Shemica Webb was charged in Will County with unlawful possession of a debit card and identity theft (7-CF-2142) in October 2007, forgery (09-CF-0414) in February 2009, and possession of a stolen motor vehicle (9-CF-1188) in May 2009. Webb pleaded guilty in all three cases in July 2011 and was sentenced to 24 months' Treatment Alternatives for Safe Communities (TASC) probation. On June 19, 2013, the State sought to revoke Webb's probation, alleging that she was unsuccessfully discharged from TASC, and violated her probation terms by driving on a suspended license in 2011 and missing appointments with her probation officer. In July 2013, the State applied for an arrest warrant and defense counsel informed the court that Webb had been arrested and was in jail in Cook County on an unrelated charge.

¶ 5 Webb appeared for numerous court dates in the custody of Cook County. At an August 6, 2013, court date, the State sought a continuance, arguing that because Webb was not in the custody of Will County, a continuance was allowable. The State argued, in the alternative, that if Webb was in Will County's custody, the time for the revocation hearing could be extended because of the nature of the offense. The trial court agreed with the State without stating its reasoning and granted its motion to continue.

¶ 6 On August 27, 2014, defense counsel inquired of the court: "Judge, I wanted to make sure that [Webb] was in custody as reference to the petition to revoke first. I don't know if there's ever been a bond set -- or she doesn't want to be in custody, Judge." The trial court

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<sup>1</sup> The record establishes the defendant prefers the name of Butler rather than Webb but we will use Webb to maintain consistency with the caption.

stated, “okay,” and continued the case. At an October 2013, court appearance, defense counsel told the trial court that Webb had been sentenced to three years in her Cook County case and began her prison term on September 18, 2013. Webb’s Will County cases were continued for the next 11 months, during which time Webb made several appearances in custody of the Illinois Department of Corrections (IDOC).

¶ 7 At a hearing on the petition to revoke in September 2014, Webb entered a guilty plea, admitting that she violated her probation by driving on a suspended license. The State dropped the other charges. There was no agreement on resentencing. The trial court found the plea was voluntary and supported by the facts. The State informed the trial court that Webb’s projected release date from DOC was November 20, 2014, on her Cook County sentence and that the State preferred that Webb be sentenced for her Will County offense before her release. The trial court stated that it would issue a no-bond warrant and that Webb would be brought to Will County on her release. However, the warrant did not issue.

¶ 8 Sentencing took place on November 18, 2014. The State inquired about bond and whether a warrant had issued. It informed the court that Webb was scheduled to be released from IDOC in two days and wanted to ensure that Webb was in “a secure setting.” The trial court noted that a warrant application had been pending since July 2013, and that it would issue a warrant. The trial court stated that if Webb were paroled, she would be brought to the Will County jail, and ordered IDOC to produce Webb on November 20.

¶ 9 On November 20, defense counsel informed the trial court IDOC declined to bring Webb to Will County and instead released her. The trial court ordered Webb’s mother to bring Webb to court the following day. On November 21, Webb appeared and the trial court sentenced her to terms of imprisonment of three (7-CF-2142) and four years (9-CF-0414, 9-CF-1188). The

sentences were required to be served consecutively for an aggregate term of 11 years' imprisonment. The trial court credited Webb with 12 months' credit for the time she spent on probation.

¶ 10 Webb sought a reconsideration of her sentence, arguing it was excessive. The trial court granted the motion and reduced Webb's aggregate term to nine years, including three years for each of the three cases. The court did not credit her for the 12 months' she spent on probation as it originally did. Both Webb and the State agreed that she was entitled to credit for the time she spent in custody in Cook County from June 16, 2013, to September 18, 2013, when she was sentenced to the IDOC. Webb also sought credit through November 20, 2014, to include the time she spent in prison on the Cook County case.

¶ 11 The trial court found that Webb was not entitled to credit for the time she spent in IDOC on her Cook County case, explaining that because Webb was serving a prison sentence, she could not also receive good time credit on a pending case. The trial court issued sentencing orders on December 5, 2014, and gave Webb additional credit for the time she spent in Cook County jail, and in the Will County jail after her release from the IDOC, from November 21 to December 5, 2014. Webb timely appealed.

¶ 12 ANALYSIS

¶ 13 The issue on appeal is whether the trial court erred by failing to credit Webb with time she spent in prison on an unrelated charge. Webb argues that she is entitled to an additional 428 days of presentence custody credit for the time she spent in IDOC on her Cook County charges prior to her sentencing in the instant case. She submits that she was in the custody of Will County when she started her IDOC term and did not stop being in the custody of Will County while she was in prison.

¶ 14 A defendant is entitled to credit for time spent in custody as a result of the offense on which the sentence is imposed. 730 ILCS 5/5-8-7(b) (West 2008) (n/k/a 730 ILCS 5/5-4.5-100(b) (2012)). Consecutive sentences are to be treated as a single term of imprisonment and a defendant must be awarded credit against his prison term for all the time spent in an institution since the offense was committed. 730 ILCS 5/5-8-4(d)(8), (g)(4) (West 2008). The custody credit is intended to account for all the time a defendant spends in custody for a particular offense. *People v. Latona*, 184 Ill. 2d 260, 270 (1998). A defendant who is in custody serving a sentence on one charge and is in simultaneous presentence custody on an unrelated charge is entitled to presentence custody for the second offense. *People v. Robinson*, 172 Ill. 2d 452, 459 (1996). This court reviews issues of statutory construction *de novo*. *People v. Johnson*, 401 Ill. App. 3d 678, 680 (2010).

¶ 15 Here, the State applied for an arrest warrant in July 2013, based on Webb's violation of the terms of her probation. The application was not acted upon in July 2013, and a review of the record makes it clear the State did not believe Webb was in custody on these charges, since it sought a continuance from the hearing on the petition to revoke on August 6, 2013, based on the fact that Webb was not in custody on these charges. Similarly, Webb's counsel sought a continuance on August 27, 2013, to October 8, 2013, to determine whether she was in custody on these charges. The trial court granted the continuance, but at the next court hearing the topic was not revisited and was not again discussed until the sentencing hearing on November 18, 2014, when it was determined that the trial court had never acted on the State's warrant application. Even though the trial court orally announced on two occasions that a warrant would issue, there is no indication that it did and Webb was released from the IDOC on November 20, without being transferred to Will County.

¶ 16 The record supports the trial court's finding that Webb was not in simultaneous custody and not entitled to presentence credit. Our prior decisions in *People v. White*, 357 Ill. App. 3d 1070 (3rd Dist. 2005) and *People v. Chamberlain*, 354 Ill. App. 3d 1070 (3rd Dist. 2005) do not dictate a different result, despite that no warrants issued in those cases and we found the defendants were entitled to presentence custody credit. In *White*, the defendant was on mandatory supervised release (MSR) when he was arrested in two different counties on new charges and subsequently arrested for violating his probation. *White*, 357 Ill. App. 3d at 1072. The trial court ruled the defendant was not eligible for simultaneous credit time on the new charges for time he spent in custody on the probation violation charge. *Id.* On appeal, we found the defendant was entitled to presentence custody on the new charges from the date he was arrested on the MSR violation because he was in custody for the same offenses for which the new sentence was imposed. *Id.* at 1075.

¶ 17 In *Chamberlain*, the defendant was charged with a new offense that he committed when he was in custody at the youth center for unrelated offenses. *Chamberlain*, 354 Ill. App. 3d at 1071. He sought presentence custody credit for the time between when he was charged with the new offense and when he was transferred on that offense to the county jail. *Id.* at 1074. At issue was whether the defendant was entitled to presentence custody credit for the time he was also serving his sentence on the prior offenses. *Id.* This court found that the defendant was in simultaneous custody from the date he was charged with the new offense, reasoning he was never out of custody. *Id.* at 1075.

¶ 18 *White* and *Chamberlain* are distinguishable. In *White*, the defendant was arrested on both the new charges that resulted in the MSR violation and on the MSR violation. Similarly, in *Chamberlain*, the defendant was in custody when he committed the new offense and was never

released from custody on any of the charges. Here, despite the trial court stating on more than one occasion that it would issue an arrest warrant for the probation violation, the warrant was not issued. Webb was never arrested on the petition to revoke and was thus never in custody on that offense. If she had not been in custody of Cook County and the IDOC on the Cook County charges, she would not have been in Will County custody because the arrest warrant never issued.

¶ 19 Because Webb continued to be on probation for the offenses underlying the petition to revoke, she was not in simultaneous custody. As a result, we cannot grant her credit for the time she served in IDOC while this charge is pending. Webb was not in Will County custody until the day after her release from IDOC when the trial court revoked her probation. She was not in custody for the probation violation at the time she served her Cook County IDOC term or at any time before November 21, 2014. Although the State agreed to the credit for the time Webb spent in Cook County jail, we note she was not eligible for the credit because she was not simultaneously in Will County custody. The State did not challenge the additional credit for the time Webb was in Cook County jail and we will not reduce it. See *People v. Castleberry*, 2015 IL 116916, ¶¶ 22-23 (State barred from seeking to reduce presentence custody credit when it did not file cross-appeal).

¶ 20 We find Webb was not eligible for precustody credit for the time she spent in the IDOC as she was not in Will County custody until after her IDOC release. The trial court did not err in refusing to award Webb credit for the time she spent in the IDOC on unrelated charges.

¶ 21 The judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.