

**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**

June 2, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 160495-U

NO. 4-16-0495

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

|                                      |   |                    |
|--------------------------------------|---|--------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from        |
| Plaintiff-Appellee,                  | ) | Circuit Court of   |
| v.                                   | ) | McLean County      |
| MICHAEL TREMAINE HARDEN,             | ) | No. 14CF372        |
| Defendant-Appellant.                 | ) |                    |
|                                      | ) | Honorable          |
|                                      | ) | Robert L. Freitag, |
|                                      | ) | Judge Presiding.   |

JUSTICE POPE delivered the judgment of the court.  
Justices Appleton and Knecht concurred in the judgment.

**ORDER**

¶ 1 ¶Held: The appellate court affirmed, finding defendant was not entitled to additional sentence credit.

¶ 2 On April 1, 2014, defendant, Michael Tremaine Harden, was arrested and subsequently charged in McLean County case No. 14-CF-372 with unlawful possession of cannabis with intent to deliver (count I) (720 ILCS 550/5(d) (West 2014)) and unlawful possession of cannabis (count II) (720 ILCS 550/4(d) (West 2014)). While out on bond in case No. 14-CF-372, he was arrested and charged with separate drug offenses in McLean County case No. 14-CF-987, unrelated to his arrest in case No. 14-CF-372. In December 2014, defendant entered an open guilty plea to count I in case No. 14-CF-372, and the State dismissed count II and case No. 14-CF-987. In February 2015, the trial court sentenced defendant to seven years in prison with credit for nine days served. Defendant remained in custody from his arrest in case

No. 14-CF-987 through sentencing herein. Defendant appeals, arguing he is entitled to an additional 128 days of sentence credit under section 5-4.5-100(c) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-100(c) (West 2014)). We disagree and affirm.

¶ 3

#### I. BACKGROUND

¶ 4 Defendant was arrested on April 1, 2014, for two cannabis-related offenses occurring on that day. On April 9, 2014, defendant posted bond and was released from custody. That same day, the State indicted defendant in case No. 14-CF-372 with (1) unlawful possession of over 30 grams, but less than 500 grams, of a substance containing cannabis with the intent to deliver (count I) (720 ILCS 550/5(d) (West 2014)) and (2) unlawful possession of over 30 grams, but less than 500 grams, of a substance containing cannabis (count II) (720 ILCS 550/4(d) (West 2014)) (the offenses committed on April 1, 2014). While out on bond in case No. 14-CF-372, defendant was arrested on August 25, 2014, and charged in case No. 14-CF-987 with multiple drug-related offenses. According to defendant's brief, these offenses occurred on August 25, 2014, after the commission of the offenses in case No. 14-CF-372.

¶ 5 In August 2014, defendant appeared before the trial court in case No. 14-CF-372. The court informed him "[o]n this case (No. 14-CF-372,) you have already posted a bond. You are not in custody in this case, so you're not getting any credit in this case." The court offered defendant the opportunity to receive sentence credit for custody in both cases if he surrendered bond in case No. 14-CF-372. Defendant refused to surrender his bond, and the court stated, "defendant remains not in custody on this case (No. 14-CF-372)." Defendant did not post bond and remained in custody in case No. 14-CF-987.

¶ 6 In December 2014, defendant entered an open plea of guilty to count I in case No. 14-CF-372. As part of the plea agreement, the State agreed to drop count II and dismiss case No.

14-CF-987. In February 2015, the trial court granted the State's motion to dismiss case No. 14-CF-987 and sentenced defendant to seven years in prison, followed by one year of mandatory supervised release. The court gave defendant credit for nine days in custody from April 1, 2014, through April 9, 2014.

¶ 7 The trial court denied defendant's amended motion to reconsider in June 2016. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues he is entitled to an additional 128 days of sentence credit for days served in custody in case No. 14-CF-987. He requests this court to reconsider our decision in *People v. Clark*, 2014 IL App (4th) 130331, 15 N.E.3d 539, which held section 5-4.5-100(c) of the Unified Code "does not allow credit for time spent in custody on a subsequent charge that is dismissed." *People v. Jones*, 2015 IL App (4th) 130711, ¶ 22, 44 N.E.3d 1112 (quoting *Clark*, 2014 IL App (4th) 130331, ¶ 25, 15 N.E.3d 539). Defendant argues under section 5-4.5-100(c), "a defendant is entitled to credit (for time not otherwise credited in another case) against the sentence he or she received for the prosecuted offense when the conduct underlying that offense occurred prior to the arrest for the dismissed charge." Defendant also argues he should receive sentence credit under the rule of lenity. The State responds the plain language of section 4-5-100(c) does not allow defendant to obtain sentence credit and notes defendant's position contravenes this court's holding in *Clark*. We agree with the State.

¶ 10 Whether a defendant is entitled to sentence credit for presentence custody is reviewed *de novo*. *Id.* ¶ 12, 44 N.E.3d 1112.

¶ 11 Section 5-4.5-100(c) of the Unified Code provides:

"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 \*\*\* of imprisonment for time spent in custody under the former charge not credited against another sentence." 720 ILCS 5/5-4.5-100(c) (West 2014).

According to defendant, "and prosecuted on another charge" refers to the offense for which a defendant is convicted, and "arrested on one charge" refers to a subsequent offense that is dismissed. We previously rejected this interpretation of section 5-4.5-100(c). *Clark*, 2014 IL App (4th) 130331, ¶¶ 23-24, 15 N.E.3d 539 (citing *Cook*, 392 Ill. App. 3d at 151-52, 910 N.E.2d at 211(Pope, J. dissenting)). This court instead determined "[t]he language '[a]n offender arrested on one charge,' refers to the arrest(s) that occurred first in time and the language 'and prosecuted on another charge' refers to the charge filed after the original charge(s)." *Jones*, 2015 IL App (4th) 130711, ¶ 18, 44 N.E.3d 1112 (citing *Clark*, 2014 IL App (4th) 130331, ¶ 23, 15 N.E.3d 539). Therefore, section 5-4.5-100(c) " 'provides for credit against the sentence imposed in the subsequent charge \*\*\* for time spent in custody on the original charges \*\*\* that has not been credited against another sentence, so long as the conduct in the subsequent charge occurred prior to the arrest on the first charge(s).' " *Id.* (quoting *Clark*, 2014 IL App (4th) 130331, ¶ 23, 15 N.E.3d 539)

¶ 12 Section 5-4.5-100(c) is inapplicable to defendant's request for sentence credit for days spent in custody in case No. 14-CF-987. "The language [of section 5-4.5-100(c)] does not allow for a credit for time spent in custody on a subsequent charge." *Clark*, 2014 IL App (4th) 130331, ¶ 25, 15 N.E.3d 539. The offenses charged in case No. 14-CF-987 occurred after the conduct that forms the bases of his charges in this case. When given the opportunity, defendant

did not surrender bond and was, therefore, in custody solely for case No. 14-CF-987. See *People v. Arnhold*, 115 Ill. 2d 379, 383, 504 N.E.2d 100, 101 (1987) ("[A] defendant who is out on bond on one charge, and who is subsequently rearrested and returned to custody on another charge, is not returned to custody on the first charge until his bond is withdrawn or revoked."). Because defendant was solely in custody for case No. 14-CF-987, the days spent in custody cannot be applied as credit against his sentence in this case.

¶ 13 We reject defendant's assertion this court erred by adopting the *Cook* dissent's interpretation of section 5-4.5-100(c). See *Clark*, 2014 IL App (4th) 130311, ¶ 24, 15 N.E.3d 539 (citing *Cook*, 392 Ill. App. 3d at 151-52, 910 N.E.2d at 211 (Pope, J., dissenting)). Our supreme court has stated:

"Section 5-8-7(c) was adopted to 'prevent the State from dropping an *initial* charge and recharging a defendant with another crime, with the intent of denying credit for time spent in jail on the first charge.' [Citations.] Because the initial charge against defendant was not dropped in favor of a subsequent charge, section 5-8-7(c) is not directly applicable to the case at bar." (Emphasis added.) *People v. Robinson*, 172 Ill. 2d 452, 460-61, 667 N.E.2d 1305, 1309 (1996).

¶ 14 The Council Commentary states, "Subparagraph (c) provides for the case, not covered under former law, where all confinement since arrest is credited against the sentence even if the original charge is dropped in favor of a new charge which results in conviction and imprisonment." 730 ILCS Ann. 5/5-8-7, Council Commentary-1973, at 622 (Smith-Hurd 2007). We find defendant's claim the language "even if" demonstrated the intent for a broader application of section 5-4.5-100(c) unconvincing. The Council Commentary expressly

referenced instances where "the original charge is dropped in favor of a new charge," and further states, "subparagraph (c) makes the rule explicit." *Id.*

¶ 15 Defendant also argues he should obtain sentence credit under the rule of lenity, which provides "where a criminal statute is capable of two constructions, courts must adopt the one that operates in favor of the accused." *People v. Davis*, 199 Ill. 2d 130, 140, 766 N.E.2d 641, 647 (2002). We disagree. Here, the alleged ambiguity in section 5-4.5-100(c) does not rise to a "grievous ambiguity or uncertainty in the statute. " (Internal quotation marks omitted.) *People v. Gutman*, 2011 IL 110338, ¶ 43, 959 N.E.2d 621. In our interpretation of section 5-4.5-100(c), we noted "[t]he title of section 5-4.5-100(c) \*\*\* indicates the credit is for custody on a *former* charge. Moreover, the provision uses the following language: 'time spent in custody under the *former charge* not credited against another sentence.' " (Emphasis in original.) *Clark*, 2014 IL App (4th) 130331, ¶ 24, 15 N.E.3d 539 (quoting 730 ILCS 5/5-4.5-100(c) (West 2010)). Thus, we find no grievous ambiguity in section 5-4.5-100(c) allowing for additional sentence credit under the rule of lenity.

¶ 16

### III. CONCLUSION

¶ 17 For the reasons stated, we affirm the trial court's judgment. We award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 18 Affirmed.