

No. 1-15-2381

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	Nos. 09 C5 50501
)	09 CR 21344
)	
BERNARD O'HALLAREN,)	Honorable
)	Colleen Ann Hyland,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* We modify the defendant’s mittimus to reflect the correct class of offense and sentence for his violation of bail bond conviction, and otherwise affirm.

¶ 2 Following a guilty plea, the defendant, Bernard O’Hallaren, was convicted of one count of theft (720 ILCS 5/16-1(a)(1) (West 2008)) and one count of violation of bail bond (720 ILCS 5/32-10 (West 2008)), and sentenced to a total of four years’ imprisonment.¹ On appeal, he

¹ Throughout the record, the defendant’s last name also appears as “O’Hallaran.” In this order, we adopt the spelling used in his *pro se* filings.

contends, and the State correctly concedes, that his mittimus should be modified to reflect the correct class of offense and sentence for his bail bond violation. For the reasons that follow, we modify the mittimus and otherwise affirm.

¶ 3 On August 25, 2009, the defendant was charged with theft of labor, services, or use of property, a Class 4 felony (720 ILCS 5/16-3(b), (c) (West 2008)). He posted bond but did not appear for arraignment, which was scheduled for October 15, 2009. Subsequently, the State filed (1) a superseding information charging him with multiple counts of Class 2 and Class 3 felony theft (720 ILCS 5/16-1(a), (b) (West 2008)) (case No. 09 C5 50501), and (2) an indictment charging him with one count of violation of bail bond (720 ILCS 5/32-10 (West 2008)) (case No. 09 CR 21344).

¶ 4 On October 22, 2014, the defendant pled guilty to one count of Class 3 felony theft and one count of violation of bail bond. For the theft offense, the trial court imposed two years' imprisonment with 100 days' presentence credit. For the bail bond violation, the court classified the offense as a Class 3 felony and imposed a consecutive sentence of two years' imprisonment. Both sentences qualified for day-for-day good conduct credit. See 730 ILCS 5/3-6-3(a)(2.1) (West 2008).

¶ 5 On November 20, 2014, the defendant filed a *pro se* motion to vacate sentence and withdraw guilty plea. Post-plea counsel was appointed and filed an amended motion and certificate pursuant to Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013), arguing that the defendant "believes he has a viable defense to the theft charges" and entered "[a] negotiated plea to serve an unauthorized sentence" on his bail bond violation. At a hearing on August 20, 2015, the defense withdrew the motion as to the theft conviction and the trial court denied the motion as to the bail bond conviction. The defendant filed a timely notice of appeal.

¶ 6 On November 23, 2015, during the pendency of the defendant’s appeal, he filed in this court a *pro se* “Emergency Motion to Stay Sentence.” Therein, he argued that the trial court erred in classifying the bail bond violation as a Class 3 felony because he posted bail in connection with the original charge of theft of labor, services, or use of property, a Class 4 felony (720 ILCS 5/16-3(b), (c) (West 2008)). Therefore, according to the defendant, the bail bond violation should have been classified as a Class A misdemeanor. See 720 ILCS 5/32-10(a) (West 2008) (a person who “incurs a forfeiture of *** bail” commits “a felony of the next lower Class or a Class A misdemeanor if the underlying offense was a Class 4 felony”). As a Class A misdemeanor, the bail bond violation would carry a maximum sentence of “less than one year.” 730 ILCS 5/5-4.5-55(a) (West 2008).

¶ 7 On January 20, 2016, this court granted the defendant’s emergency motion on the basis that, with 100 days’ presentence credit for the theft conviction and day-for-day good conduct credit for both convictions, he completed his sentence for theft on July 15, 2015, and completed the maximum sentence for violating bail bond on January 13, 2016. Accordingly, we stayed the defendant’s sentence and ordered him released without bond pending resolution of this appeal.²

¶ 8 Turning to the defendant’s argument on appeal, he initially contends that (1) the trial court erred in denying his motion to vacate sentence and withdraw guilty plea for violating bail bond where plea counsel was ineffective and the plea reflected a “misunderstanding of law,” and (2) post-plea counsel failed to strictly comply with the certificate requirements of Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). The State submits that, in view of our order of January 20, 2016, remanding the cause for either re-pleading or compliance with Rule 604(d) is unnecessary and, instead, the proper remedy is to modify the mittimus to reflect the correct class

² On January 21, 2016, we denied the State’s Emergency Motion to Reconsider but found that the defendant’s “immediate release has no effect” on the one-year period of mandatory supervised release that he was required to serve as part of his sentence for theft.

of offense and sentence for bail bond violation. In his reply brief, the defendant agrees with the State's proposed remedy, asks that the mittimus be amended to reflect 364 days' incarceration for violation of bail bond, and withdraws his request for remand.

¶ 9 Based on our review of the record, we agree that the appropriate action in this case is to modify the defendant's mittimus to reflect that his bail bond violation was a Class A misdemeanor with a sentence of 364 days. In holding so, we note that the defendant neither challenges the factual basis underlying his convictions for either theft or violation of bail bond, nor claims that his sentence for violation of bail bond should have been less than the statutory maximum for a Class A misdemeanor. But for the necessary corrections to the mittimus, he seeks no other relief beyond that granted in this court's order of January 20, 2016. The State, in turn, raises no further challenge to that order.

¶ 10 In view of the foregoing, we (1) affirm the defendant's conviction and sentence for theft, and (2) pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our authority to correct a mittimus without remand (*People v. Brown*, 2015 IL App (1st) 132046, ¶ 68), affirm his conviction for violation of bail bond but modify the mittimus to reflect that the offense was a Class A misdemeanor with a sentence of 364 days.

¶ 11 Affirmed; mittimus corrected.