

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).

2018 IL App (4th) 160661-U

NO. 4-16-0661

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

November 7, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Adams County
GLENN D. WOODEN,)	No. 10CF392
Defendant-Appellant.)	
)	Honorable
)	Debra L. Wellborn,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court granted appointed counsel’s motion to withdraw and affirmed the trial court’s judgment because no meritorious issue could be raised on appeal.

¶ 2 This appeal comes to us from the office of the State Appellate Defender (OSAD) to withdraw as counsel because no meritorious issues could be raised on appeal. For the following reasons, we agree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2008, the State charged defendant, Glenn D. Wooden, with delivery of a controlled substance in Adams County case No. 08-CF-524 (“2008 case”). In 2009, after defendant was released on bond, the State also charged defendant with aggravated unlawful possession of a weapon in Cook County case No. 09-CF-1129201 (“Cook County case”). Defendant was convicted in that case and the trial court sentenced him to four years’

imprisonment on March 3, 2010. Defendant entered the Department of Corrections (DOC) on March 5, 2010.

¶ 5 While serving his Cook County sentence, defendant was returned to Adams County on July 3, 2010, for the pending 2008 case. On July 6, 2010, the State charged defendant with aggravated battery in the present case, No. 10-CF-392 (“2010 case”), for allegedly striking another inmate at the Adams County jail on July 3, 2010.

¶ 6 In September 2010, defendant pleaded guilty in the 2008 case, and the trial court sentenced him to five years in prison, to be served consecutively to his sentence in the Cook County case.

¶ 7 On September 14, 2010, a jury found defendant guilty of aggravated battery in the 2010 case. In December 2010, the trial court sentenced defendant to eight years’ imprisonment, to be served consecutively to the sentences in the two other cases. The court awarded defendant 160 days of presentence credit towards his sentence in the 2010 case for his time in custody beginning July 3, 2010, to the date of sentencing.

¶ 8 Defendant then filed a motion to reconsider sentence, which the trial court denied. Defendant appealed, and this court affirmed. *People v. Wooden*, 2013 IL App (4th) 110613-U.

¶ 9 In December 2014, defendant filed a *pro se* motion for order *nunc pro tunc*, in which he requested a corrected mittimus to give him credit for the 160 days served toward his sentence in the 2010 case. In January 2015, the trial court denied the motion, finding the sentencing order and mittimus correctly stated the credit to which defendant was entitled.

¶ 10 In August 2016, defendant filed a *pro se* motion to compel DOC to give him credit for 160 days served toward his sentence in the 2010 case. Defendant contended DOC did not give him the 160 days’ credit as ordered by the trial court, he was not simultaneously in

custody in another case during those 160 days, and he was therefore entitled to credit under *People v. Latona*, 184 Ill. 2d 260, 703 N.E.2d 901 (1998). Defendant attached both the sentencing order and the DOC calculation sheet to his motion. The calculation sheet showed an aggregate sentence of 17 years' imprisonment for the three cases and a projected outdate of November 13, 2017, 8.5 years from the custody date of May 13, 2009. A notation on the sheet stated "no county credit" for defendant's sentence in the 2010 case.

¶ 11 Later in August 2016, the trial court denied defendant's motion to compel, finding that (1) the court did not have jurisdiction to compel DOC to award presentence credit in a particular manner and (2) defendant's motion was untimely.

¶ 12 Defendant appealed, and the trial court appointed OSAD to represent him. In June 2018, OSAD filed a motion to withdraw as counsel, asserting an appeal would lack arguable merit. See *Anders v. California*, 386 U.S. 738 (1967). The record shows service on defendant, who did not file a response. On its own motion, this court granted defendant until August 1, 2018, to file additional points and authorities. He filed none. We grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 13 II. ANALYSIS

¶ 14 OSAD requests to withdraw as counsel because there are no potentially meritorious issues to appeal. We agree.

¶ 15 A. Timeliness

¶ 16 OSAD asserts that defendant's motion was untimely. We agree.

¶ 17 The Uniform Code of Corrections (Code) provides a defendant shall raise any challenge to the correctness of his sentence within 30 days of the sentencing order. 730 ILCS 5/5-4.5-50(d) (West 2010). A defendant forfeits a sentencing issue by failing to raise it in the

motion to reconsider sentence, or to object at the sentencing hearing. *People v. McGath*, 2017 IL App (4th) 150608, ¶ 66, 83 N.E.3d 671. The trial court sentenced defendant in the instant case on December 9, 2010. Defendant filed the motion to compel in 2016, long after the 30-day period had passed. Defendant does not collaterally attack DOC's application of his presentence credit, and he raises no authority that would excuse him from the 30-day statutory requirement. Accordingly, his motion to compel was untimely.

¶ 18 B. Presentence Credit

¶ 19 OSAD asserts that even if defendant's motion was timely, it would fail on the merits because DOC properly applied defendant's presentence credit. We agree.

¶ 20 Pursuant to the Code, DOC will treat a defendant serving consecutive sentences as though he is serving a single term. 730 ILCS 5/5-8-4(g) (West 2010). Furthermore, "[t]he defendant shall be awarded credit against the aggregate maximum term *** of imprisonment for all time served in an institution since the commission of the offense or offenses." *Id.* § 5-8-4(g)(4). However, "to the extent that an offender sentenced to consecutive sentences had been incarcerated prior thereto on more than one offense simultaneously, he should be given credit only once for actual days served." *Latona*, 184 Ill. 2d at 271.

¶ 21 Here, DOC applied defendant's presentence credit properly. Defendant is serving consecutive sentences, and he was in simultaneous custody at the time of sentencing in the instant case. DOC's time calculation sheet reflects defendant's aggregate term of 17 years' imprisonment for the three consecutive sentences to run from his custody date of May 13, 2009. The period for which he received credit for being in custody in this case therefore includes the 160 days from July 3, 2010, the date of the offense, to December 9, 2010, the date of sentencing. Defendant began serving his sentence in the Cook County case in March 2010, and was therefore

in simultaneous custody for that case throughout the 160-day period at issue. Defendant's claim that he was solely in custody for the 2010 case during the 160-day period for which he was credited is belied by the record. Defendant is entitled to credit toward his aggregate term once for each day in custody in Adams County, but no more. Thus, defendant's claim that he is entitled to additional presentence credit is meritless.

¶ 22

III. CONCLUSION

¶ 23 For the foregoing reasons, we grant OSAD's motion to withdraw as counsel and affirm the trial court's judgment.

¶ 24 Affirmed.