

2011 IL App (1st) 101034-U
No. 1-10-1034

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 JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 03 CR 13790
)	
LEIVANTE ADAMS,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Presiding Justice Garcia and Justice McBride concurred in the judgment.

ORDER

Held: Defendant's mittimus amended to reflect correct number of days spent in presentence custody.

¶ 1 Following a jury trial, defendant Leivante Adams was convicted of first degree murder and sentenced to 45 years' imprisonment. We affirmed on direct appeal. *People v. Adams*, No. 1-05-0908 (2006) (unpublished order under Supreme Court Rule 23). We also affirmed the summary dismissal of defendant's 2007 *pro se* postconviction petition as supplemented *pro se*. *People v. Adams*, No. 1-07-3215 (2009) (unpublished order under Supreme Court Rule 23). Defendant now appeals from the March 2010 *sua sponte* dismissal of his January 2010 *pro se*

petition for relief from judgment. 735 ILCS 5/2-1401 (West 2008). He contends that his mittimus must be corrected to reflect the proper credit for presentencing detention. The State responds that we lack jurisdiction over defendant's claim because it was not raised in the circuit court under his section 2-1401 petition.

¶ 2 However, defendant filed a notice of appeal from the dismissal of his section 2-1401 petition within 30 days, vesting us with jurisdiction. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303(a)(1) (eff. June 4, 2008); R. 304(b)(3) (eff. Feb. 26, 2010). A claim for presentence detention credit is statutory and "may be raised at any time and at any stage of court proceedings, even on appeal in a postconviction proceeding" where statutory claims generally cannot be raised. *People v. Caballero*, 228 Ill. 2d 79, 87-88 (2008). The State cites *People v. Permanian*, 381 Ill. App. 3d 869 (2008) (no jurisdiction to hear voidness claim raised for first time on appeal from denial of petition for forensic testing; see 725 ILCS 5/116-3 (West 2008)) to the contrary. However, *Permanian* relies heavily on *People v. Flowers*, 208 Ill. 2d 291 (2003), under which we cannot consider voidness claims on direct appeal from a guilty plea where a motion to withdraw the plea was not timely filed so the trial court lost jurisdiction before the final ruling being appealed. In contrast to the particular context of *Flowers*, a voidness claim may be properly raised for the first time on appeal from the denial of a postconviction petition. *People v. Thompson*, 209 Ill. 2d 19, 27-29 (2004). After stating the proposition relied on by the State, the *Permanian* court also found that the allegedly void judgment was not in fact void so that the proposition at issue was mere *dicta*. In light of *Caballero* and *Thompson*, we see no reason to follow that *dicta*.

¶ 3 Defendant contends that his mittimus should reflect a credit of 637 days rather than the 606 days now stated on the mittimus. The record supports defendant: he was in custody from his arrest on May 29, 2003, to sentencing on February 24, 2005, or 637 days.

¶ 4 Under Supreme Court Rule 615(b)(2) (eff. Aug. 27, 1999), the clerk of the circuit court is

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directed to correct the mittimus to reflect that defendant is entitled to 637 days' credit for presentencing detention. The judgment of the circuit court is affirmed in all other respects.

¶ 5 Affirmed; mittimus corrected.