

No. 1-10-0299

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 82 C 7620
	)	
WILLIE WHITE,	)	Honorable
	)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE GARCIA delivered the judgment of the court.  
Presiding Justice R. E. Gordon and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the basis for defendant's claim that he is entitled to seven additional days of sentencing credit is not clear and available from the record, we affirm the judgment of the circuit court dismissing his successive *pro se* post-conviction petition.

¶ 2 Defendant Willie White appeals from an order of the circuit court denying him leave to file a successive *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2008). On appeal, defendant solely contends that he is entitled to an additional seven days' sentencing credit where he was allegedly released from federal to state custody on February 12, 1990, but was not given any credit towards his state sentence until

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February 19, 1990. We affirm.

¶ 3 The record shows that in November 1982, defendant pled guilty to federal criminal charges (bank robbery) and was sentenced to 13 years' imprisonment. Defendant was also charged in Illinois with the murder underlying this present appeal, and, following a 1984 bench trial, he was convicted of first degree murder and sentenced to an extended 60-year prison term, which was to be served consecutive to his pre-existing federal sentence. Defendant unsuccessfully challenged his conviction and sentence on direct appeal. *People v. White*, No. 1-84-0975 (1985) (unpublished order under Supreme Court Rule 23). According to the Illinois Department of Corrections (IDOC) records, defendant was taken into state custody on February 19, 1990.

¶ 4 On June 25, 2001, defendant filed his first *pro se* petition under the Act, alleging that his 60-year extended term sentence violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The circuit court summarily dismissed defendant's petition, and this court affirmed that judgment on appeal. *People v. White*, No. 1-01-3605 (2002) (unpublished order under Supreme Court Rule 23).

¶ 5 On November 15, 2007, defendant filed a "Petition to Vacate Void Judgment" pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2006)). As grounds for relief, defendant alleged that he was transferred from state to federal custody causing his constitutional right to a speedy trial to be violated. The circuit court denied defendant's section 2-1401 petition, and this court affirmed its judgment on appeal. *People v. White*, No. 1-08-0368 (2009) (unpublished order under Supreme Court Rule 23).

¶ 6 On November 16, 2009, defendant filed the *pro se* successive post-conviction petition at bar, alleging, in pertinent part, that he is entitled to an additional seven days of sentencing credit pursuant to section 5-8-7(b) of the Unified Code of Corrections (Code) (730

ILCS 5/5-8-7(b) (West 2008)). He specifically contends that on February 12, 1990, he was released from federal custody and placed into the custody of the Cook County Sheriff, who ultimately brought him to the Joliet Correctional Center on February 19, 1990. However, defendant asserts that he was only given credit for being in State custody starting on February 19, 1990. He thus maintains that to correct this error he is entitled to an additional seven days of custody credit, starting on February 12 when he was taken into State custody. Defendant attached a document to his petition showing that he was released from the "United States Penitentiary, Leavenworth, Ks." on February 12, 1990. The form also shows that the detaining authority was the "Cook County Sheriff, Maywood, Il." The transportation section of the document was left blank.

¶ 7 On December 23, 2009, the circuit court denied defendant leave to file the instant petition. In doing so, the circuit court found that the claims in defendant's petition were barred by waiver, and he failed to satisfy the cause and prejudice test.

¶ 8 On appeal from that order, defendant does not challenge the propriety of the circuit court's order denying him leave to file his successive post-conviction petition for failing to establish cause and prejudice pursuant to section 122-1(f) of the Act (725 ILCS 5/122-1(f) (West 2008)). Instead, defendant maintains that he was entitled to seven days' sentencing credit where he was released from federal to state custody on February 12, 1990, but was not given any credit towards his sentence until February 19, 1990, the date the IDOC records indicate he was placed in state custody. As relief, defendant requests that we remand his cause to the circuit court with instructions to correct his mittimus. The State responds by asserting that defendant's claim is not cognizable under the Act, and the basis for his relief is not clear and available from the record. We review this issue *de novo*. See *People v. White*, 357 Ill. App. 3d 1070, 1073 (2005) (reviewing *de novo* whether the defendant was entitled to additional sentencing credit).

¶ 9 According to section 5-8-7(b) of the Code, "the offender shall be given credit [against his prison sentence] for time spent in custody as a result of the offense for which the sentence was imposed." *White*, 357 Ill. App. 3d at 1073, quoting 730 ILCS 5/5-8-7(b) (West 2008). It is mandatory under section 5-8-7(b) of the Code that a trial court give credit to a defendant for his presentence incarceration. *White*, 357 Ill. App. 3d at 1073.

¶ 10 We find *People v. Caballero*, 228 Ill. 2d 79 (2008), instructive to the case at bar regarding the basis for our consideration of sentencing credit even though it is a claim based on statute. The supreme court in *Caballero* held that although a claim for monetary credit is a statutory claim and thus not cognizable under the Act, it also held that this statutory claim may be considered as an "application of the defendant" made under the statute and "may be raised at any time and at any stage of court proceedings, even on appeal in a postconviction proceeding." *Caballero*, 228 Ill. 2d at 87-88. Accordingly, the supreme court went on to state that if the basis for granting the application of the defendant is "clear and available from the record," the appellate court may, in the interests of an orderly administration of justice, grant the relief requested. *Caballero*, 228 Ill. 2d at 88.

¶ 11 In this case, we agree with the State that the basis for defendant's claim that he completed his federal sentence and was delivered into the custody of the Cook County Sheriff on February 12, 1990 is not "clear and available from the record" as required by *Caballero*. Defendant's entire claim rests on his reading of a document attached to his latest petition for post-conviction relief. This document, which purports to be from the United States Department of Justice, Bureau of Prisons, states that defendant was released from the "United State's Penitentiary, Leavenworth, Ks." at 8:30 a.m. on February 12, 1990.

¶ 12 Contrary to defendant's contention, however, it does not indicate that defendant was discharged from federal custody on that date. The document actually provides that his

proposed residence was in Minneapolis, Minnesota, and expressly names the United States probation officer with his address in Minneapolis. Moreover, the document is incomplete in that it does not indicate defendant's specific destination after his release from Leavenworth, nor does it show how he would be transported there. In fact, the transportation section of the form was left blank. More importantly, the document does not indicate whose custody defendant would be in when he left Leavenworth until he was delivered to the custody of the Cook County Sheriff in Maywood. For these reasons, the document defendant attached to his petition does not show that he is entitled to sentencing credit beginning on February 12, 1990.

¶ 13 In reaching this conclusion, we reject defendant's contention that the IDOC records erroneously show that defendant's custody date was February 19, 1990. In fact, the IDOC document must be given greater credence than either the unsupported allegations in defendant's successive petition or his interpretation of the incomplete, ambiguous document he filed with it. See *People v. Peterson*, 372 Ill. App. 3d 1010, 1019 (2007) (stating that this court may take judicial notice of IDOC's records because they are public documents). We further note that none of the sentencing credit cases defendant cites applies here because he cannot show any error in sentencing credit. See *e.g., People v. Latona*, 184 Ill. 2d 260, 272 (1998) (holding that where the defendant was serving consecutive sentences on separate offenses, he should be given credit for any time served in county custody between his release from prison on his first offense and sentencing on his second). Thus, defendant has not established a clear claim for any additional sentencing credit.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 15 Affirmed.