

jacket over his head, positioned his hand in his pocket so as to resemble a weapon, and told the employee that he needed the money. The employee asked defendant if he was serious, to which defendant replied in the affirmative, and she handed over the cash, totaling about \$2,800. Defendant fled out a side door.

¶ 5 Not surprisingly, police soon came to suspect defendant of being involved in the robbery. They received information that he could be found at the Motel 6 in Carbondale, and upon finding him passed out in a guest room took him into custody. Defendant had approximately \$2,300 cash when he was arrested.

¶ 6 Defendant was charged with one count of aggravated robbery for allegedly violating section 18-5(a) of the Criminal Code of 1961, a Class 1 felony. 720 ILCS 5/18-5(a) (West 2006). On February 17, 2009, after the court denied defendant's motion to suppress statements he had made to police, he agreed to enter a plea of guilty in exchange for the State's agreement to amend the charge to robbery, a Class 2 felony (720 ILCS 5/18-1(a) (West 2006)), and to seek a sentence of six years in the Department of Corrections (Department).

¶ 7 When the court asked about the proposed disposition the State said that "it is a day-for-day sentence, credit for 96 days served." The court then imposed the agreed-upon six-year sentence. The court stated as follows when orally pronouncing defendant's sentence: "Six years in the Illinois Department of Corrections, two years of mandatory supervised release, credit for 96 days served, and a day-for-day sentence." The written judgment order entered at the conclusion of the hearing notes that in addition to the sentence in the Department and the subsequent term of mandatory supervised release, the court had "further ordered that [defendant receive] day-for-day credit of 96 days."

¶ 8 On October 1, 2009, defendant filed a motion for order *nunc pro tunc*, claiming that he is entitled to an additional 96 days' credit against his sentence because the court "ordered

day-for-day credit to be applied." The court denied defendant's motion, and defendant filed a timely notice of appeal.

¶ 9

DISCUSSION

¶ 10 On appeal, defendant argues that "due process, fundamental fairness, and contract principles underlying plea bargains" support his contention that his sentence must be "corrected" because he believed that he would receive additional credit against his sentence for the 96 days he served in the Jackson County jail prior to being sentenced to the Department. Defendant maintains that the language used by the court during the sentencing hearing and on the sentencing order reasonably led him to believe that he would receive two days credit against his eventual sentence for each day he spent in custody prior to sentencing, and that he has not been awarded this credit.

¶ 11 A court has the authority to enter a *nunc pro tunc* order to correct errors in a prior order to ensure that the record conforms to the judgment actually rendered by the court. *Roach v. Coastal Gas Station*, 363 Ill. App. 3d 674, 678, 843 N.E.2d 393, 397 (2006). The record must clearly show that the order being modified contradicts the judgment actually rendered by the court. *Id.*

¶ 12 Section 3-6-3(a)(2.1) of the Unified Code of Corrections, which deals with regulations for the early release of prisoners, provides as follows:

"[A] prisoner who is serving a term of imprisonment shall receive one day of good conduct credit for each day of his or her sentence of imprisonment or recommitment under Section 3-3-9. Each day of good conduct credit shall reduce by one day the prisoner's period of imprisonment or recommitment under Section 3-3-9." 730 ILCS 5/3-6-3(a)(2.1) (West 2006).

¶ 13 Although the term "day-for-day credit" does not appear in the language of section 3-6-3, the term is used to describe the system of mandatory good-conduct credit referred to

therein. *People v. Lindsey*, 199 Ill. 2d 460, 477-78, 771 N.E.2d 399, 412 (2002). Under this system, an inmate in the Department may earn credit for good behavior once he or she begins to serve his prison sentence, effectively cutting in half the duration of the inmate's sentence to the Department provided he is not subject to the loss of credits due to disciplinary infractions. *Id.* Section 3-6-3, however, applies only to inmates in the Department. *Id.* Defendant was not an inmate in the Department prior to sentencing, but was instead being held in the Jackson County jail, and section 3-6-3 does not support defendant's argument that he is entitled to additional credit against his sentence.

¶ 14 Despite now acknowledging in his brief that there is no statutory authority for crediting an inmate with day-for-day credit both for the time spent in custody prior to sentencing and the time spent in the Department following sentencing, defendant urges us to use our authority pursuant to Supreme Court Rule 615(b) (eff. Aug. 27, 1999) to enforce the specific performance of the agreement as he understood it.

¶ 15 It is true, as defendant argues, that contract principles apply to plea agreements and that this court may modify the circuit court's judgment in order to enforce the specific performance of a plea agreement. *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 558, 778 N.E.2d 701, 704 (2002). Under the facts herein, though, the State has fulfilled its obligations under the agreement and defendant has received the benefit of his bargain. The allegations in defendant's motion for order *nunc pro tunc* are directly contradicted by the record. His motion alleges that "the mittimus issued by the Court at the time of sentencing failed to reflect the time the defendant had spent in custody prior to being sentenced." But in the sentencing order, the court expressly found that "the defendant is entitled to receive a credit for time actually served in custody of 96 days."

¶ 16 Defendant was sentenced to six years in prison, to be followed by two years of mandatory supervised release. His sentence to the Department is to be served "day-for-day,"

and he received credit of 96 days for time spent in presentencing custody. Nowhere in the transcript of the sentencing hearing or in the sentencing order is it stated that defendant would receive 192 days' credit for the 96 days he spent in custody.

¶ 17 As the State points out, the court's sentencing order and oral pronouncement of sentence merely articulated the provisions of section 3-6-3(a)(2.1). Defendant will receive credit for 96 days served against his six-year sentence, and the Department will award defendant day-for-day credit against his six-year term of imprisonment. Under defendant's interpretation, he would in fact receive 384 days' credit against his sentence, to which he is not entitled.

¶ 18 The Department's records, of which this court may take notice (*Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 430, 876 N.E.2d 659, 661 (2007)), show that defendant has been in custody since November 14, 2008, the day of his arrest at the Motel 6, and that his projected out date is November 11, 2011. This is a term of 1,094 days, or one day short of three years. He was sentenced to six years in the Department, meaning that he will only actually serve half of that sentence, including the time he spent in the county jail prior to sentencing. Defendant is already being awarded day-for-day credit not only for the time he has spent in the custody of the Department but also for the time he spent in the county jail prior to sentencing. He is not entitled to receive additional credit against his sentence, and his arguments to the contrary are without merit.

¶ 19 **CONCLUSION**

¶ 20 Based on the foregoing, the circuit court committed no error in denying defendant's motion, and we affirm the court's judgment.

¶ 21 Affirmed.