

agreeing to not seek a sentence of more than 42 years. At the plea hearing, the court accepted the plea agreement. On April 29, 2002, the defendant was sentenced to 28 years of incarceration with credit for time served in presentence custody. The mittimus reflects that the defendant received credit for time served from September 22, 2000, to April 29, 2002, which was calculated as 585 days of credit for time served.

¶ 5 The defendant did not file a direct appeal. On July 17, 2009, the defendant filed a *pro se* document titled "motion for fundamental fairness-failure to admonish and appoint defendant council [*sic*]." On July 27, 2009, the defendant filed another *pro se* document titled "motion to attack the validity of judgement."

¶ 6 On July 28, 2009, the circuit court dismissed the first motion, stating that it was untimely and that an adequate admonishment had been provided regarding mandatory supervised release. The court also dismissed the second motion, stating that it was untimely and failed to state a claim upon which relief could be granted.

¶ 7 The defendant filed a timely notice of appeal from the denial of the second motion.

¶ 8 ANALYSIS

¶ 9 On appeal, the defendant argues that the circuit court recharacterized the defendant's motion as a postconviction petition, without the proper admonishments, and then summarily denied the petition. Moreover, the defendant argues that the petition did state the gist of a constitutional claim.

¶ 10 In response, the State has filed a confession of error. It agrees that a remand is warranted for the proper admonishments required for a recharacterization and agrees that the defendant is entitled to six more days of presentencing credit.

¶ 11 First, we note that both parties agree that the circuit court recharacterized the defendant's motions by using the three-year limitations period set forth in the Post-Conviction Hearing Act (725 ILCS 5/122-1(c) (West 2008)) to determine that the petition

was untimely. We find the parties' contention to be well-taken. Accordingly, we will address the arguments regarding the proper admonishments for a recharacterization.

¶ 12 The supreme court in *People v. Shellstrom*, 216 Ill. 2d 45, 51 (2005), set forth admonishments that must be given to the defendant when a circuit court decides to recharacterize a defendant's pleading to ensure that the defendant is aware of the consequences of the recharacterization and allow for the defendant to amend or withdraw the petition. *Shellstrom* set forth the required admonishments as follows:

"[T]he circuit court must (1) notify the *pro se* litigant that the court intends to recharacterize the pleading, (2) warn the litigant that this recharacterization means that any subsequent postconviction petition will be subject to the restrictions on successive postconviction petitions, and (3) provide the litigant an opportunity to withdraw the pleading or to amend it so that it contains all the claims appropriate to a postconviction petition that the litigant believes he or she has." *Id.* at 57.

We review *de novo* the circuit court's compliance with applicable procedures. *People v. Helgesen*, 347 Ill. App. 3d 672, 675 (2004).

¶ 13 In the instant case, the record reflects that notice or admonishments were not given to the defendant regarding the circuit court's decision to recharacterize the defendant's motion as a postconviction petition. The admonishments are required, and thus, we conclude that a remand is necessary.

¶ 14 Since the defendant will have the ability to amend the petition on remand, it is not necessary to address whether the defendant's petition stated the gist of a constitutional claim.

¶ 15 Next, we turn to the defendant's argument that she was not credited for the accurate amount of time that she spent in presentence custody. When a defendant is sentenced, he or she shall be entitled to credit for time spent in presentencing custody as a consequence of that offense. 730 ILCS 5/5-8-7(b) (West 2008). "A defendant held in custody for any

part of the day should be given credit against his sentence for that day." *People v. Johnson*, 396 Ill. App. 3d 1028, 1033 (2009). Furthermore, "the statutory right to sentence credit is mandatory and can be raised for the first time on appeal." *People v. Cook*, 392 Ill. App. 3d 147, 149 (2009).

¶ 16 Here, the defendant and the State agree that the defendant was arrested on September 15, 2000, and sentenced on April 29, 2002. Therefore, the record is clear that the defendant spent 591 days in presentencing custody and that the mittimus only reflects credit for 585 days. We order the circuit court to amend the mittimus to reflect 591 days of credit for time served.

¶ 17 **CONCLUSION**

¶ 18 For the foregoing reasons, we reverse the circuit court's summary dismissal of the defendant's postconviction petition and remand with directions to provide the proper admonishments and to amend the mittimus to reflect credit for 591 days of time served.

¶ 19 Reversed; cause remanded with directions.