

NOTICE  
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2012 IL App (4th) 100917-U

Filed 4/30/12

NO. 4-10-0917

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
DAN E. ARCHIE,	)	No. 09CF383
Defendant-Appellant.	)	
	)	Honorable
	)	Lisa Holder White,
	)	Judge Presiding.

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JUSTICE McCULLOUGH delivered the judgment of the court.  
Justices Steigmann and Cook concurred in the judgment.

**ORDER**

¶ 1     *Held:* OSAD's motion to withdraw as appellate counsel is granted. The trial court correctly denied defendant's *pro se* motion for order *nunc pro tunc*.

¶ 2     Defendant, Dan E. Archie, appeals the trial court's denial of his *pro se* motion for an order *nunc pro tunc*. On appeal, the office of the State Appellate Defender (OSAD) was appointed to represent him. OSAD has filed a motion to withdraw as appellate counsel pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), alleging an appeal would be frivolous. We grant OSAD's motion and affirm the court's denial of defendant's motion.

¶ 3     On March 10, 2009, the State charged defendant (case No. 09-CF-383) with driving while license revoked with three prior convictions for driving while license revoked or suspended (625 ILCS 5/6-303(d-3) (West 2008)) and obstructing justice (720 ILCS 5/31-4(a) (West 2008)). On April 17, 2009, defendant pleaded guilty to obstructing justice and the trial

court sentenced him to 30 months' probation for that offense and three unrelated offenses to which he had already pleaded guilty (Nos. 07-CF-1035 for retail theft, 08-CF-816 for possession of a controlled substance, and 08-CF-1006 for retail theft).

¶ 4 On September 22, 2009, the State filed a petition to revoke defendant's probation, alleging he committed a new offense of retail theft (No. 09-CF-1431). On January 21, 2010, defendant appeared in court and entered open admissions to his pending probation violations. He also pleaded guilty in connection with the new retail theft charge referenced in the petition to revoke (No. 09-CF-1431) and additional new charges, alleging two counts of retail theft (No. 09-CF-1564).

¶ 5 On March 8, 2010, defendant was resentenced to four consecutive one-year prison terms in connection with the case at bar (No. 09-CF-383) and his other three older cases (Nos. 07-CF-1035, 08-CF-816, and 08-CF-1006). In connection with defendant's two new cases (Nos. 09-CF-1431 and 09-CF-1564), the trial court sentenced him to concurrent three-year prison terms. In this case (No. 09-CF-383), the trial court found defendant entitled to receive credit for time served in custody from March 5, to April 17, 2009. In connection with case No. 09-CF-1431, the court granted defendant credit for time served from September 9, 2009, through March 7, 2010. Defendant did not appeal.

¶ 6 On August 3, 2010, a *pro se* letter from defendant was filed. He asserted his sentencing order in the case at bar (No. 09-CF-383) needed to be amended *nunc pro tunc* to include credit for time served in presentence custody from September 9, 2009, through March 7, 2010. On August 11, 2010, the trial court entered a docket entry, stating it had reviewed defendant's correspondence and construed it as a motion for *nunc pro tunc*. The court then

determined defendant had been give the correct sentence credit and denied his motion. It stated that when the September 2009 petition to revoke defendant's probation had been filed "there was no request for a warrant and \*\*\* [d]efendant was not arrested pursuant to the petition." It noted defendant was in custody when the petition was filed in connection with cases Nos. 09-CF-1431 and 09-CF-1564, and not the case at bar, No. 09-CF-383.

¶ 7 On October 18, 2010, defendant filed a *pro se* motion for order *nun pro tunc*, arguing he was entitled to sentence credit in this case for time spent in jail from September 9, 2009, through March 11, 2010. On October 21, 2010, the trial court's docket entry shows it reviewed defendant's motion and found it was previously addressed. The court denied defendant's motion.

¶ 8 This appeal followed. As stated, OSAD was appointed to represent defendant on appeal. On September 28, 2011, it filed a motion to withdraw as appellate counsel. The record shows service of the motion on defendant. This court granted defendant leave to file additional points and authorities but he has failed to respond.

¶ 9 OSAD argues no meritorious argument can be made that the trial court erred by denying defendant's *pro se* motion for order *nunc pro tunc*. We agree.

¶ 10 Defendant's claim that he is entitled to additional sentence credit has no merit. The Unified Code of Corrections (Code) provides that a defendant is entitled to sentence credit for "time spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2010). The Code also provides that "[a]n offender arrested on one charge and prosecuted on another charge for conduct that occurred prior to his or her arrest shall be given credit \*\*\* for time spent in custody under the former charge not credited against another

sentence." 730 ILCS 5/5-4.5-100(c) (West 2010).

¶ 11 Here, the record supports the conclusion that, from September 2009 to March 2010, defendant was in jail in connection with case Nos. 09-CF-1431 and 09-CF-1564, and not the case at bar, No. 09-CF-383. As a result, he is not entitled to sentence credit under section 5-4.5-100(b) of the Code. Additionally, when the trial court sentenced defendant in case No. 09-CF-1431, it found him entitled to credit against his sentence in that case for the disputed September 2009 to March 2010 time period. Thus, defendant's time spent in custody was "credited against another sentence" and may not also be applied to the present case, rendering section 5-4.5-100(c) of the Code similarly inapplicable.

¶ 12 Additionally, a motion for a *nunc pro tunc* order was not proper manner for defendant's challenge. The purpose of a *nunc pro tunc* order is to incorporate "into the record something which was actually previously done by the court but inadvertently omitted by clerical error" and not "for supplying omitted judicial action, or correcting judicial errors under the pretense of correcting clerical errors." *People v. Melchor*, 226 Ill. 2d 24, 32-33, 871 N.E.2d 32, 36 (2007). In this instance, there was no clerical error to be corrected by a *nunc pro tunc* order and defendant was, instead, asking the court to correct an alleged error it made in its sentencing judgment.

¶ 13 Defendant's claim for additional sentence credit is without merit. The trial court committed no error in denying his motion for order *nunc pro tunc*.

¶ 14 For the reasons stated, we grant OSAD's motion and affirm the trial court's judgment.

¶ 15 Affirmed.