

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).

2012 IL App (4th) 110170-U

Filed 5/23/12

NO. 4-11-0170

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Sangamon County
JAMES D. McCLAIN,)	No. 03CF631
Defendant-Appellant.)	
)	Honorable
)	John W. Belz,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

- ¶ 1 *Held:* Because the trial court awarded defendant the proper amount of sentencing credit in its order on remand, it properly denied defendant's subsequent motion for *nunc pro tunc* requesting the same sentencing credit for time spent in pretrial custody.
- ¶ 2 Defendant, James D. McClain, was serving a term of 20 years imprisonment upon his conviction of armed violence (720 ILCS 5/33A-2(a) (West 2002)) and concurrent terms of 10 years imprisonment upon his conviction of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2002)), 6 years each upon his convictions of possession of cocaine (720 ILCS 570/402(c) (West 2002)) and methylenedioxymethamphetamine (a/k/a ecstasy) (720 ILCS 570/402(c) (West 2002)), and 6 months upon his conviction of possession of cannabis (720 ILCS 550/4(b) (West 2002)). He filed a direct appeal, claiming (1) the trial court erred in denying his motion to suppress, (2) the one-act, one-crime rule required that his drug-possession and weapon

convictions be vacated, and (3) he was entitled to an additional day of sentencing credit. Partially agreeing with defendant's second contention, and accepting the State's concession on his third contention, this court affirmed in part, vacated in part, and remanded with directions to amend the sentencing judgment to reflect sentencing credit for 277 days, adding 1 additional day from the credit originally awarded. *People v. McClain*, No. 4-04-0393 (June 5, 2006) (unpublished order under Supreme Court Rule 23).

¶ 3 In February 2008, defendant filed a *pro se* motion for leave to file a *mandamus* petition. He sought to compel the correction of the "mittimus to show the 10-year sentence for unlawful use of a weapon by felon and vacate mittimus for armed violence 20-year sentence." The State filed a response, explaining that defendant had apparently misconstrued this court's decision. Defendant filed a *pro se* petition for relief from judgment, claiming this court's decision to vacate the drug-possession convictions necessarily meant his armed-violence conviction should be vacated as well, because the drug-related offenses were the predicate felonies for the armed-violence offense. Without a predicate felony, defendant claims, his conviction of armed violence cannot stand.

¶ 4 On April 3, 2008, the trial court entered an order denying defendant's motion for *mandamus* relief, without mentioning defendant's petition for relief from judgment. The court entered an amended sentencing judgment, in accordance with this court's mandate, finding defendant was in pretrial custody from June 29, 2003, through March 31, 2004, entitling him to 277 days of credit, rather than the 276 days as stated in the original sentencing judgment.

¶ 5 In September 2008, the trial court entered an order dismissing defendant's petition for relief from judgment as untimely, since the petition was filed more than four years after the January 2004 judgment of convictions were entered. Petitions must be filed no later than two years

after the entry of the final judgment. 735 ILCS 5/2-1401(c) (West 2010).

¶ 6 In January 2011, defendant filed a motion for order *nunc pro tunc*, requesting he be given credit for 277 days for the time he spent in pretrial custody from June 29, 2003, to March 31, 2004. The trial court denied the motion, since its April 3, 2008, order already granted defendant the credit he was requesting. This appeal followed.

¶ 7 The office of the State Appellate Defender (OSAD) has moved to withdraw from representing defendant in this appeal, because, in OSAD's opinion, the appeal is clearly devoid of merit. See *Pennsylvania v. Finley*, 481 U.S. 551, 559 (1987) (the federal constitution does not require compliance with the strict procedures in *Anders v. California*, 386 U.S. 738 (1967), when appointed defense counsel moves to withdraw from representing the defendant in a collateral proceeding as opposed to a direct appeal as of right); *People v. Lee*, 251 Ill. App. 3d 63, 64-65 (1993) ("[A] post-conviction petitioner is entitled to representation only as provided by State law [citation], which, in Illinois, is reasonable representation [citation].").

¶ 8 OSAD sent defendant a copy of its motion and memorandum of law. On this court's own motion, we afforded defendant time to file additional points and authorities until March 1, 2012. None have been filed. After reviewing the arguments and the record, we conclude that OSAD is correct in its assessment of the merits of this appeal. In June 2006, this court, on defendant's direct appeal, granted the relief defendant now requests. In April 2008, the trial court entered an amended sentencing judgment in accordance with this court's decision. Defendant's motion for *nunc pro tunc* requesting the relief already granted is moot. Therefore, we grant OSAD's motion to withdraw from representing defendant in this appeal, and we affirm the trial court's judgment.

¶ 9

III. CONCLUSION

¶ 10 For the foregoing reasons, we grant OSAD's motion to withdraw, and we affirm the trial court's judgment.

¶ 11 Affirmed.