

for time served in presentencing custody. In addition, the mittimus was stayed until October 26, 2009, and the State agreed to seek only 5½ years if he appeared on time for that hearing and did not get into any more trouble. The court accepted the terms of the negotiated plea. The defendant's bond was also reduced, and the defendant posted a \$2,000 cash deposit. Defense counsel also signed a disclaimer that the defendant was entitled to 173 days of credit for time served in presentencing custody. However, the defendant was not released on October 6, 2009, but was held on a parole hold from the state of Missouri.

¶ 5 On October 26, 2009, the court found that the defendant was in full compliance with the agreement, reduced his sentence, and stayed the order until November 13, 2009. On October 28, 2009, the defendant filed a motion to withdraw his guilty plea, arguing that certain terms of the negotiated plea had not been fulfilled.

¶ 6 On October 30, 2009, the court ordered the defendant's bond be modified to a \$50,000 personal recognizance bond. The court also ordered the defendant released to the Missouri parole authorities, but in the event that the Missouri parole authorities failed to secure the defendant on or before November 13, 2009, the defendant's mittimus to the Illinois Department of Corrections would issue.

¶ 7 On November 18, 2009, the court held a hearing in which it was explained that after the defendant pled guilty he had not been released as negotiated but that he had been held on a parole hold for Missouri. However, Missouri had made no attempts to secure the defendant. At the hearing, the defendant agreed to withdraw his motion to withdraw his guilty plea and be furloughed for 48 hours. If the defendant turned himself back in on time, then the sentence of 5½ years would stand. The defendant agreed to these terms.

¶ 8 On December 29, 2009, the circuit court ordered the mittimus to issue. The order also noted that Missouri indicated that it had no holds or warrants on the defendant at that time.

¶ 9 On February 4, 2010, the defendant filed a postconviction petition, arguing that his defense counsel was ineffective in not advising him of the consequences of his plea. The defendant also argued that he did not receive the full benefit of his bargain because his furlough was shorter than negotiated and that the State provided him with incorrect information about his parole status in Missouri. In his petition, the defendant did not argue that defense counsel was ineffective for having failed to advise the circuit court of the correct arrest date or for having failed to advise him to surrender his bond when he was not released due to the Missouri parole hold. On April 29, 2010, the circuit court summarily dismissed the petition.

¶ 10 On October 27, 2010, the defendant filed a motion for leave to file a late notice of appeal and a late notice of appeal. Subsequently, on November 8, 2010, the defendant filed a motion to amend his mittimus asking that he be credited with 37 more days for time served in presentencing custody. This motion was not ruled upon before the defendant was granted leave to file his late notice of appeal on January 26, 2011.

¶ 11 On May 19, 2011, the circuit court ruled on the defendant's motion to amend mittimus, ordering that the defendant be granted an additional 37 days totaling 210 days of credit for time served in presentencing custody. The record on review was supplemented with the May 19, 2011, order.

¶ 12 ANALYSIS

¶ 13 We review *de novo* the circuit court's dismissal of a postconviction petition without an evidentiary hearing. *People v. Coleman*, 183 Ill. 2d 366, 389 (1998). On

appeal, the defendant argues for the first time that defense counsel was ineffective for failing to advise the circuit court of the defendant's correct arrest date and that he was ineffective for failing to advise the defendant to surrender his bond when he was not released because of a Missouri parole hold. He contends that this failure entitles him to additional days of sentencing credit. Since the defendant's original brief was filed, he has received an additional 37 days of credit for time served in presentencing custody and, in his reply brief, he argues that he is still entitled to an extra 46 days of credit. In his reply brief, the defendant asks the court to treat his request as a motion to amend the mittimus.

¶ 14 In response, the State argues that the defendant is precluded from raising this issue because it was not included in his initial postconviction petition. The State argues that the defendant's claim is not merely that of a sentencing issue which can be brought at any time but is contingent upon a finding of ineffective assistance of counsel. The State also argues that the reviewing court lacks jurisdiction to review the May 19, 2011, court order which was filed after the defendant filed his notice of appeal.

¶ 15 We first note that the defendant appeals from the circuit court's order denying his postconviction petition. Generally, a reviewing court only has jurisdiction to review the judgments specified by the defendant in the notice of appeal. *People v. Smith*, 228 Ill. 2d 95, 104 (2008). Here, the notice of appeal filed states that the defendant is appealing the dismissal of his postconviction petition. The defendant's motion to amend his mittimus was filed after his notice of appeal. The notice of appeal contains no references to that particular motion, and in fact that motion was not ruled upon until after the notice of appeal was filed. Therefore, our jurisdiction is limited to the court's order that is specified in the notice of appeal.

¶ 16 We now turn to the defendant's arguments on appeal. Although the defendant's sentencing-credit arguments on appeal were not brought in his postconviction petition, he argues that sentencing credit is not subject to waiver and can be brought for the first time on appeal. However, the defendant's arguments regarding his sentencing credit are based upon a claim that defense counsel was ineffective.

¶ 17 This court recently addressed this issue in *People v. Miller*, 2011 IL App (5th) 090679. In *Miller*, the defendant argued that he was entitled to additional credit for time spent in presentencing custody because his defense counsel was ineffective by not advising him to revoke or withdraw his bond against his initial charge when he was taken into custody on a subsequent charge. *Id.* at ¶ 7. The court held that when a defendant raises an issue of sentencing credit and this issue is dependent on a finding of ineffective assistance of counsel that is raised for the first time on appeal, the issue is forfeited on appeal. *Id.* at ¶ 17.

¶ 18 Here, similar to *Miller*, the defendant is raising a sentencing-credit issue for the first time on appeal which is contingent upon a finding that the defense counsel was ineffective. Thus, the real issue is whether the defense counsel was ineffective. However, the issue of ineffective assistance of counsel regarding sentencing credit was not raised in the defendant's postconviction petition. The defendant cannot raise issues for the first time on appeal that were not presented in the postconviction petition. *People v. Jones*, 211 Ill. 2d 140, 148 (2004). Moreover, the record is unclear regarding the facts necessary for this court to determine if there was ineffective assistance of counsel regarding the defendant's arrest date and the failure to withdraw the defendant's bond. "However, this holding does not leave a postconviction petitioner such as defendant entirely without recourse. A defendant

