

determine the amount of presentencing custody credit the defendant would receive. The defendant remained in presentence custody from the time he was arrested until his sentencing. The Department of Corrections' (DOC) website indicates that the defendant entered into custody on January 7, 1999. However, the record indicates that he was arrested on January 6, 1999.

¶ 5 On direct appeal, this court affirmed the defendant's convictions and sentences by way of an unpublished order entered on April 30, 2002. See *People v. Rodgers*, No. 5-00-0280 (2002) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)). Subsequently, the defendant filed a *pro se* postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-2.1(a) (West 2002)) on September 4, 2002. The circuit court heard oral arguments on the petition. The petition was dismissed on June 30, 2003. The defendant appealed the dismissal of his petition, and this court affirmed by way of an unpublished order entered on December 30, 2004. See *People v. Rodgers*, No. 5-03-0446 (2004) (unpublished order under Supreme Court Rule 23 (eff. July 1, 1994)). On June 16, 2006, the defendant filed a motion for leave to file a successive postconviction petition and a proposed successive postconviction petition. The circuit court denied leave to file the postconviction petition on July 10, 2006. He appealed the denial of leave to file a successive petition, and this court affirmed. *People v. Rodgers*, No. 5-06-0406 (2009) (unpublished order under Supreme Court Rule 23 (eff. May 30, 2008)). The defendant then filed another motion for leave to file a successive postconviction petition on November 17, 2010. In that motion, he alleged that the State presented perjured testimony to the grand jury and that there was a discovery violation. He asked that the charges against him be dismissed as a sanction. The court denied that motion on November 22, 2010. The defendant appeals to this court from the circuit court's denial of his motion for leave to file a successive postconviction petition.

¶ 6

ANALYSIS

¶ 7 The defendant does not present the same arguments that he alleged in his second motion for leave to file a successive postconviction petition. Instead, he argues that this court should amend his mittimus to reflect his presentence custody credit. Specifically, the defendant argues that he is entitled to one additional day of credit. However, the State argues that there are discrepancies in the record regarding the defendant's presentence custody, and as such, this cause should be remanded to the circuit court to determine the correct days of presentencing credit.

¶ 8 The issue of presentence custody credit is mandatory and can be raised for the first time on appeal. *People v. Cook*, 392 Ill. App. 3d 147, 149 (2009). When a defendant is sentenced, he or she is entitled to credit for time spent in presentencing custody as a consequence of that offense. 730 ILCS 5/5-8-7(b) (West 2000). "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). This court may amend a mittimus where the foundation for doing so is "clear and available from the record." *People v. Caballero*, 228 Ill. 2d 79, 88 (2008).

¶ 9 We agree that we are able to amend a mittimus when the record is clear. Here, the record is not clear as to whether the defendant entered presentence custody on January 6, 1999, or January 7, 1999. The DOC website indicates a different date of custody from the date of arrest in the record. Further, it is not clear whether the DOC website is meant to accurately reflect the defendant's mittimus. There are no sheriff's calculations of the defendant's presentence credit nor are there any of the circuit court's calculations within the record. The defendant has not shown that he has actually been deprived of a day of presentence custody credit because the record and the DOC information are at odds with one another. Where the record is not clear, we are able to remand the cause to have the circuit

court properly determine the defendant's mittimus. *Id.*

¶ 10

CONCLUSION

¶ 11 For the foregoing reasons, we remand the cause to the circuit court for the determination of when the defendant was taken into custody and the number of days of presentence custody credit the defendant should have received.

¶ 12 Remanded with directions.