

No. 1-12-0138

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 03 CR 13064
)	03 CR 13067
)	
KENNETH STEWARD,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's conviction is affirmed but the cause is remanded for recalculation of the amount of presentence custody credit.
- ¶ 2 Defendant Kenneth Steward pleaded guilty in two separate theft cases and was sentenced to two concurrent terms of seven years of imprisonment. The trial court awarded defendant 180 days of presentence custody credit. On appeal, defendant contends that the cause should be remanded for recalculation of presentencing credit. Defendant argues that he is entitled to "at least 876 days" of credit; the State counters that the record only affirmatively shows that defendant was in state presentence custody for 188 days.
- ¶ 3 For the reasons that follow, we affirm defendant's conviction and remand with directions to recalculate the amount of presentence custody credit.
- ¶ 4 Defendant was arrested on May 19, 2003, for his role in a mortgage fraud operation that took

place in 2000 and 2001. He was charged with theft and other related counts in two separate cases, Nos. 03 CR 13064 and 03 CR 13067. According to defendant, he remained in continuous custody from his arrest until he posted bond on December 2, 2003. In contrast, the State asserts that defendant was released on bond earlier, at some unknown time between October 8, 2003, and December 2, 2003, but admits that "there is nothing in the record that shows exactly when defendant was released from custody" between those two dates.

¶ 5 In 2009, defendant was arrested for unlawful use of a weapon (case No. 09 CR 20628). On November 1, 2009, the trial court issued a no bond order. On November 4, 2009, the trial court denied defendant's motion to set bond. Defendant maintains that from this date, he remained in continuous custody for the duration of his trial proceedings, which lasted until September 12, 2011, the date he pleaded guilty. The State, however, asserts that defendant was in custody from November 1, 2009, until some time between December 15, 2009, and January 8, 2010, but acknowledges that "there is no indication as to when exactly defendant was released from custody."

¶ 6 The record indicates that defendant was in federal custody on July 22, 2010. On that date, an assistant State's Attorney told the trial court that defendant's federal case arose from instances of wire fraud, mail fraud, and loan fraud that were committed between 2004 and 2008, during the period of time he was out on bond in the instant case.

¶ 7 Defendant's trial proceedings continued until September 12, 2011. On that date, the State rested its case, the trial court denied defendant's motion for a directed finding, and defendant pleaded guilty to one count of theft in each of his two cases. The trial court sentenced defendant to seven years of imprisonment on each case "to run concurrent to each other but consecutive to [his] federal sentence." After the trial court announced the sentence, defendant and the attorneys addressed the issue of presentence custody credit as follows:

"[DEFENSE ATTORNEY]: Credit, the defendant has ...

[ASSISTANT STATE'S ATTORNEY]: Four months in on this at the

beginning.

DEFENDANT: Two months.

[ASSISTANT STATE'S ATTORNEY]: Two months at the beginning?

DEFENDANT: No, two months in '09.

[ASSISTANT STATE'S ATTORNEY]: After the gun charge.

[DEFENSE ATTORNEY]: Right, there was six months there.

[ASSISTANT STATE'S ATTORNEY]: Plus six months credit on this.

[DEFENSE ATTORNEY]: And then there was approximately 15 months when he's been in custody regarding the revocation in federal.

[ASSISTANT STATE'S ATTORNEY]: Judge, it's my understanding that they give credit on that on the federal custody. He doesn't get double credit for that.

THE COURT: Six months is the credit on this case. So -- Well, I like to do days, so that's 180 days based at 30 a month credit -- extra credit on this case against this sentence irrespective of what kind of credit he's going to get on the federal sentence.

[DEFENSE ATTORNEY]: Right.

THE COURT: Which he's getting that other credit.

[ASSISTANT STATE'S ATTORNEY]: Correct."

¶ 8 Section 5-4.5-100(b) of the Unified Code of Corrections (Code) provides that a defendant shall be given 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). Prior to July 1, 2009, section 5-8-7(b) of the Code governed sentencing credit. 730 ILCS 5/5-8-7(b) (West 2008). On July 1, 2009, Public Act 95-1052 renumbered section 5-8-7 as section 5-4.5-100 without substantively changing the statute. Pub. Act 95-1052, § 5 (eff. July 1, 2009). Here, defendant spent time in custody both before and after July 1, 2009. Under either version of the statute, defendant is entitled to credit for the time he

1-12-0138

spent in custody as a result of his theft charges. However, he is not entitled to credit for confinement that resulted from other, unrelated offenses. *Thomas v. Greer*, 143 Ill. 2d 271, 280 (1991).

¶ 9 The record in the instant case does not reveal how many days defendant spent in custody following his arrest on May 19, 2003, or following his re-incarceration in November 2009. It also does not establish definitively whether defendant's federal incarceration was "a result of" the theft charges at issue in this case, or rather, arose from unrelated offenses. As such, we are unable to determine the exact number of days for which defendant should be granted credit. Accordingly, we remand for the trial court to make that determination.

¶ 10 For the reasons explained above, we affirm defendant's conviction and remand with directions.

¶ 11 Affirmed and remanded with directions.