

2013 IL App (1st) 121454-U

THIRD DIVISION
August 7, 2013

No. 1-12-1454

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.)	No. 11 CR 16896
)	
RICARDO PHILLIPS,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant is not entitled to presentence credit for the days prior to his admission to the IDOC where sentence was imposed and the mittimus issued effective on the same day; mittimus corrected to reflect proper calculation of time served.
- ¶ 2 Following a bench trial, defendant Ricardo Phillips was found guilty of possession of a controlled substance and sentenced to an extended term of four years' imprisonment. On appeal, defendant contends that he is entitled to 222 days of presentence credit, pursuant to section 5-4.5-100 of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-100 (West 2012)), and

that the mittimus should be corrected to reflect presentence custody credit where the trial court failed to enter any credit on the mittimus.

¶ 3 The record shows that on September 14, 2011, defendant was arrested after narcotics surveillance officers observed him engage in two suspected drug transactions. On October 11, 2011, defendant was charged by information with one count of possession of a controlled substance with intent to deliver. On March 21, 2012, the trial court found defendant guilty of possession of a controlled substance and continued the matter to April 20, 2012, for posttrial motions and sentencing. On April 20, 2012, the day of sentencing, the mittimus was issued and made effective by the trial court. The mittimus reflects that defendant was awarded a total of 220 days of presentence credit.

¶ 4 In this court, defendant contends that he is entitled to two additional days of presentence credit where he was sentenced on April 20, 2012, but not transferred to the Illinois Department of Corrections (IDOC) until April 23, 2012. He argues that under the statutes relied upon by the supreme court in *People v. Williams*, 239 Ill. 2d 503 (2011), his sentence did not commence until April 23, 2012, when he was "received by the Department or the institution at which the sentence is to be served."

¶ 5 The State responds, and defendant concedes in his reply brief, that the mittimus reflects the 220 days of presentence credit awarded to him by the trial court. The State further maintains that defendant is not entitled to any additional credit because the day of the issuance of the mittimus is a day of sentence and not of presentence custody.

¶ 6 The issue of whether a defendant is entitled to presentence credit is not subject to forfeiture and may be raised for the first time on appeal, as here. *People v. Anthony*, 2011 IL App (1st) 091528-B, ¶ 20. Our review of this issue is *de novo*. *People v. Harris*, 2012 IL App (1st) 092251, ¶ 34.

¶ 7 The supreme court has held that the day defendant's mittimus is issued counts as a day of his sentence, and since he is entitled to have that day counted only once, the day of the issuance should not be counted as a day of presentence custody. *Williams*, 239 Ill. 2d at 509. In so holding, the supreme court analyzed section 5-4.5-100(b), which provides that defendant must receive one day of good-conduct credit for each day spent in presentence custody, and section 3-6-3 (730 ILCS 5/3-6-3 (West 2008)), which provides that defendant must receive credit for each day of his sentence, and observed that defendant would ultimately receive the same credit under either statute. *Williams*, 239 Ill. 2d at 507; *Harris*, 2012 IL App (1st) 092251, ¶ 36. The supreme court then noted that section 5-8-5 of the Unified Code (730 ILCS 5/5-8-5 (West 2008)) requires the trial court to commit defendant to the IDOC at the time it issues the mittimus, and that section 5-4.5-100(a) provides that defendant's sentence "shall commence on the date on which [defendant] is received by the [IDOC]." *Williams*, 239 Ill. 2d at 509; *Harris*, 2012 IL App (1st) 092551, ¶ 37. The supreme court concluded that "section 5-4.5-100 means that the sentence commences upon the issuance of the mittimus." *Williams*, 239 Ill. 2d at 509.

¶ 8 Defendant acknowledges that the mittimus was issued on April 20, 2012, the same day he was sentenced. He refers this court to the IDOC website, of which we may take judicial notice (*People v. Sanchez*, 404 Ill. App. 3d 15, 17 (2010)), showing that he was "not taken into the DOC's custody until three days after sentencing: April 23, 2012." Defendant argues that his sentence did not commence until April 23, 2012 because that is the day that the trial court committed him "to the custody of the sheriff or to the Department of Corrections." He concludes, therefore, that the mittimus must be amended to award him 222 days of presentence credit because he was not received by the IDOC on the same day he was sentenced.

¶ 9 Although defendant's position finds some support in a literal reading of *Williams* and the statutes analyzed therein, we observe that, in *Williams*, the supreme court agreed with the State's

argument that section 5-8-5 means that "a defendant comes into the *legal custody* of the Department upon the entry of judgment on his conviction and sentence." (Emphasis added.) *Williams*, 239 Ill. 2d at 508. Defendant's position that he should receive presentence credit for the days he was not literally, *i.e.*, physically, in the DOC is unavailing. Defendant is not entitled to presentence credit for the day of sentencing and the days before he was physically transferred to the IDOC, where the mittimus was issued and effective that same day. *People v. Perry*, 2011 IL App (1st) 081228, ¶ 90. In other words, defendant's sentence commenced upon the issuance of the mittimus on April 20, 2012, not three days later when he was admitted to the IDOC. *Williams*, 239 Ill. 2d at 509 (*construing* 730 ILCS 5/5-4.5-100 (West 2012)).

¶ 10 That said, we find that the 220 days of presentence credit reflected in the mittimus is incorrect where defendant actually spent 219 days in presentence custody, from Wednesday, September 14, 2011, to, but not including Friday, April 20, 2012. Thus, pursuant to our authority under Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order that the mittimus be corrected to reflect that defendant is entitled to 219 days credit for time served. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 11 Affirmed, as modified.