

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).

2013 IL App (4th) 120535-U

NO. 4-12-0535

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED  
August 29, 2013  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
DEMETRIUS HILL,	)	No. 07CF1546
Defendant-Appellant.	)	
	)	Honorable
	)	Timothy J. Steadman,
	)	Judge Presiding.

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JUSTICE TURNER delivered the judgment of the court.  
Justices Pope and Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where any appeal in this case would be frivolous, we grant the motion to withdraw as counsel filed by the office of the State Appellate Defender (OSAD). We agree any appeal would be without merit because defendant is not entitled to additional credit against his sentence.

¶ 2 In July 2008, a jury found defendant, Demetrius G. Hill, guilty of aggravated battery. In August 2008, the trial court sentenced him to nine years in prison. This court affirmed the trial court's judgment and remanded for further proceedings to determine if defendant was entitled to additional sentence credit. In June 2012, the trial court found defendant was not entitled to any additional credit.

¶ 3 On appeal, OSAD moves to withdraw its representation of defendant pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), contending an appeal in this cause would be frivolous. We grant OSAD's motion and affirm the trial court's judgment.

¶ 4

## I. BACKGROUND

¶ 5 In July 2008, a jury found defendant guilty of aggravated battery. In August 2008, the trial court sentenced him to nine years in prison. The court found defendant was entitled to sentence credit from October 19, 2007, to February 27, 2008, and from April 18, 2008, to July 20, 2008. In November 2009, defendant moved to receive a total of 276 days' credit on account of time served from October 19, 2007, through July 20, 2008. In December 2009, the court issued an amended judgment awarding defendant credit from October 19, 2007, to July 20, 2008.

¶ 6 Defendant appealed, arguing (1) the State failed to prove him guilty of aggravated battery, (2) the trial court erred in instructing the jury, and (3) he was entitled to additional sentence credit. *People v. Hill*, 409 Ill. App. 3d 451, 452, 949 N.E.2d 1180, 1181 (2011). This court affirmed the trial court's judgment on the issues pertaining to the aggravated-battery conviction and the jury instruction. As to the sentence-credit issue, defendant argued he was entitled to additional credit for time in custody between the time he posted bond on July 20, 2008, and his sentencing date of August 27, 2008. Because the record was unclear as to whether defendant was entitled to the credit, we remanded for further proceedings to determine if credit was appropriate. *Hill*, 409 Ill. App. 3d at 457, 949 N.E.2d at 1185.

¶ 7 On remand, the trial court found defendant was not entitled to any credit. In December 2011, defendant filed a *pro se* motion for reconsideration. At a June 2012 hearing, the State argued defendant posted bond on July 21, 2008, his bond was never withdrawn, and he remained on bond through his sentencing date. The court found defendant should have surrendered himself on his bond if he wanted to receive credit. By not doing so, the court found defendant was not entitled to sentence credit. This appeal followed.

¶ 8

## II. ANALYSIS

¶ 9 On appeal, OSAD has filed a motion to withdraw as counsel and has included a supporting memorandum pursuant to *Finley*. Proof of service has been shown on defendant. This court granted defendant leave to file additional points and authorities on or before July 3, 2013. He has done so, and the State has filed a responsive brief as well. Based on our examination of the record, we conclude, as has OSAD, that an appeal in this cause would be frivolous.

¶ 10 OSAD argues no colorable argument can be made that the trial court erred in finding defendant was not entitled to additional sentence credit and he was not denied the effective assistance of counsel. In his reply brief, defendant takes no issue with OSAD's claims. Instead, he argues the court erred in failing to award him 552 days' credit when he actually served 276 days in custody prior to sentencing. We disagree.

¶ 11 A defendant is entitled to credit against his prison sentence for time spent in custody as a result of the offense for which the sentence was imposed. The offender shall be given credit at the rate specified in section 3-6-3 of the Unified Code of Corrections. 730 ILCS 5/5-8-7(b) (West 2006).

"The award of any good-conduct credit is contingent upon a defendant's behavior in prison and there is no guarantee that the defendant will receive any credit. [Citations.] Furthermore, the trial court has no control over the manner in which a defendant's good-conduct credit is earned or lost, and it is within the Department of Correction's discretion to calculate what credit, if any, he will receive." *People v. Davis*, 405 Ill. App. 3d 585, 603, 940 N.E.2d

712, 728 (2010).

¶ 12 This would include credit due defendant, if any, for time spent in custody prior to sentencing. Thus, the trial court did not err in denying his motion for reconsideration.

¶ 13 III. CONCLUSION

¶ 14 For the reasons stated, we grant OSAD's motion to withdraw and affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 15 Affirmed.