



ordered to participate in a sex offender treatment program, and ordered to serve six months in the county jail. The circuit court noted that good-time credit and time served would apply, as calculated by the sheriff's department. The sheriff's calculation showed that the defendant's total time served was 91 days. However, the defendant's presentence investigation report indicated that the defendant's total time served was 93 days.

¶ 5 On August 4, 2009, the defendant was arrested again for failing to appear. He was released that same day.

¶ 6 The State filed a petition to revoke the defendant's probation on December 13, 2010. The petition alleged that the defendant had failed to complete the required sex offender counseling. The State filed a subsequent petition to revoke the defendant's probation on January 24, 2011, further alleging that the defendant had tested positive for cannabis. The defendant's probation was revoked on February 4, 2011.

¶ 7 On February 25, 2011, the circuit court sentenced the defendant to five years' imprisonment. At the sentencing hearing, defense counsel asked if the circuit court would stay the mittimus because the defendant was not in custody and he wanted to get his affairs in order before being incarcerated. The court denied the request and the defendant was placed into custody on that same day. The defendant was given credit for time served from February 24, 2008, to May 14, 2008, which totaled 81 days. The defendant filed a motion to reduce sentence on March 15, 2011. On April 19, 2011, the court denied the defendant's motion to reduce sentence. This appeal followed.

¶ 8 ANALYSIS

¶ 9 We review a defendant's right to credit for time served *de novo*. *People v. Andrews*, 365 Ill. App. 3d 696, 698 (2006). Where the record reveals the amount of credit due to the defendant, this court may modify the defendant's sentencing order without remand. *People v. Heinz*, 407 Ill. App. 3d 1016, 1024 (2011). According to section 5-8-7 of the Unified

Code of Corrections, a defendant shall receive credit for time served in presentence custody. 730 ILCS 5/5-8-7 (West 2008) (now see 730 ILCS 5/5-4.5-100 (West 2010)). A defendant held for any part of a day is given presentence credit for that day. *People v. Johnson*, 396 Ill. App. 3d 1028, 1033 (2009).

¶ 10 The defendant argues that his time-served credit cannot be correctly calculated due to ambiguities in the record. We disagree.

¶ 11 The defendant was arrested on September 12, 2007, and was released on September 28, 2007. That amounts to 17 days of time served. On February 24, 2008, the defendant was arrested for failing to appear and remained in custody until May 9, 2008. His sentence, as noted above, included four years of probation and six months in the county jail, with good-time credit to apply and time served to apply as calculated by the sheriff. The sheriff calculated the defendant's total time served as 91 days, which is incorrect. From February 24, 2008, to May 9, 2008, the defendant served 76 days. Adding that number to the previous 17 days of credit in September equals 93 days.

¶ 12 The defendant argues that the record is not clear as to whether he was released on May 9, 2008, or May 14, 2008. The State contends that the record establishes that the defendant was released on May 9, 2008. We agree with the State. In a sentencing order filed May 9, 2008, the court and sheriff's calculation indicated that the defendant was released on May 9, 2008. However, the 2011 sentencing order shows that the defendant was released on May 14, 2008. The mistake here is obvious: the 2011 sentencing order used the date the sheriff's calculation was signed and filed rather than the date that indicated when the defendant was released, which was May 9, 2008. Thus, the defendant was released on May 9, 2008.

¶ 13 On August 4, 2009, the defendant was arrested again for failing to appear. He was released the same day. He should have received one day of credit, bringing the total number

of days for time served to 94 days.

¶ 14 We therefore amend the sentencing order of February 25, 2011, to reflect credit for 94 days of time served.

¶ 15 The defendant also argues that the record's inaccurate reflection of the amount of time the defendant spent in the county jail after his sentencing but before he was transferred to the Department of Corrections (DOC) on March 9, 2011, makes the time-served issue even more confusing. Adjusting this calculation, if any adjustment is actually needed, is the DOC's task. See *People v. Mitchell*, 403 Ill. App. 3d 707, 708-09 (2010). It should be noted, though, that the sheriff's calculation incorrectly shows that the defendant was in custody on February 22, 2011. However, a review of the transcript of the February 25, 2011, sentencing proceeding shows that the defendant was not in custody until February 25, 2011, because counsel for the defendant asked the court to stay his mittimus as the defendant was not in custody and wanted to get his affairs in order before being incarcerated. The circuit court denied the request. Thus, the defendant entered into custody on February 25, 2011. As this time period is part of the defendant's sentence and not part of any presentence credit, it has no bearing on the presentence credit to which the defendant is entitled.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, the judgment of the circuit court of Edwards County is affirmed as modified.

¶ 18 Affirmed as modified.