FIFTH DIVISION
September 30, 2015

No. 1-13-3050

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. 81 C 3113
	)	
LAWRENCE DALTON,	)	Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant is entitled to 87 days of presentence custody credit for time he was in simultaneous custody in Wisconsin and Illinois. Two of defendant's three convictions for murder are vacated where only one victim was killed. Mittimus corrected.

¶ 2 Defendant Lawrence Dalton, who pleaded guilty to murder and rape and was sentenced to concurrent terms of 70 and 30 years' imprisonment, appeals from the trial court's dismissal of his *pro se* petition for presentence custody credit. On appeal, defendant contends that he is entitled to presentence custody credit from the date charges were filed against him to the date he

pleaded guilty, for a total of 182 days. He further contends that the mittimus should be corrected to reflect only one conviction for murder.

¶ 3 For the reasons that follow, we conclude that defendant is entitled to 87 days of presentence custody credit, vacate two of his three convictions for murder, and order the mittimus corrected.

¶ 4 Defendant's conviction arose from the 1978 rape and murder of Debra Sue Baker. In an unrelated case, defendant was convicted in 1979 in the Circuit Court of Kenosha County, Wisconsin, of first-degree murder, kidnapping by deceit, and first-degree sexual assault, and was sentenced to life in prison with eligibility for parole. Thereafter, defendant was committed to Central State Hospital in Wisconsin. On May 22, 1981, while defendant was still a patient at the Wisconsin hospital, a Cook County grand jury filed a true bill indicting defendant with Baker's rape and murder.[1] On August 25, 1981, defendant appeared in court in Cook County for arraignment.[2]

¶ 5 On November 20, 1981, defendant pleaded guilty to Baker's murder and rape and was sentenced to concurrent terms of 70 and 30 years' imprisonment, respectively. The trial court ordered the sentences to be served concurrently with defendant's Wisconsin life sentence. According to the official court reporter of the circuit court, the stenographic notes of the proceedings are unable to be located.

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[1] We note that a certified statement of conviction / disposition included in the record indicates that the State's Attorney of Cook County filed an indictment on May 8, 1981, charging defendant with these crimes.

[2] According to the 7th Circuit Court of Appeals, defendant had arrived in Illinois four days earlier. See *Dalton v. Battaglia*, 402 F.3d 729, 731 (7th Cir. 2005).

¶ 6 Defendant did not move to withdraw his guilty plea or file a direct appeal. In 1989, he filed a postconviction petition, alleging that his plea was not knowing and voluntary. The trial court granted the State's motion to dismiss the petition in 1995. This court affirmed. *People v. Dalton*, No. 1-96-0212 (1996) (unpublished order under Supreme Court Rule 23).

¶ 7 In 1997, defendant filed a federal *pro se* petition for a writ of *habeas corpus*. The district court denied the petition. *Dalton v. Warden, Oshkosh Correctional Institution*, 281 F. Supp. 2d 941 (2003). On appeal, the Seventh Circuit vacated the denial of the petition and remanded for an evidentiary hearing to determine whether defendant knew that he was eligible for an extended term sentence when he pleaded guilty. *Dalton v. Battaglia*, 402 F.3d 729, 739 (7th Cir. 2005). Following a hearing, the district court denied defendant's petition. *Dalton v. Smith*, No. 97 C 2368, slip op. at 12 (N.D. Ill. Dec. 16, 2005).

¶ 8 In 2001, defendant filed a *pro se* motion requesting that the trial court clarify his sentencing order to state "that I only have 3 murder on *** one victim and one rape." The trial court denied the motion on September 26, 2001.

¶ 9 On July 8, 2013, defendant filed the *pro se* motion at issue in the instant case, titled "Defendant's Motion to the Circuit Court for Sentence Credit, Pursuant to 5 ILCS 70/1-11 (2013)." In the motion, defendant alleged that he was originally arrested for Baker's murder on April 22, 1979, and that he was sentenced on November 21, 1981. Defendant asserted that he should receive presentence custody credit for that time period. The trial court denied defendant's motion. Defendant appeals.

¶ 10 On appeal, defendant first contends that he is entitled to 182 days of presentence custody credit, calculated from May 22, 1981, the date charges were filed in the instant case, until

November 20, 1981, the date he pleaded guilty to those charges. Defendant argues that even though he was already serving a Wisconsin sentence when he pleaded guilty, he is entitled to credit for the period in which he was simultaneously in custody as a result of the Illinois offenses. The State agrees that defendant should receive credit for the time he was in simultaneous custody, but maintains that simultaneous custody began on August 25, 1981, when defendant appeared in court in Illinois for arraignment.

¶ 11 Defendant failed to raise this issue at sentencing or in a posttrial motion. Usually, such failings would result in forfeiture. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, because a defendant's statutory right to receive *per diem* credit is mandatory, normal waiver rules do not apply. *People v. Williams*, 328 Ill. App. 3d 879, 887 (2002). Moreover, a sentencing order may be corrected at any time. *People v. Latona*, 184 Ill. 2d 260, 278 (1998). Accordingly, we address defendant's argument. Our review of the propriety of sentencing credit is *de novo*. *People v. Robinson*, 172 Ill. 2d 452, 457 (1996).

¶ 12 Section 5-4.5-100(b) of the Unified Code of Corrections provides that a defendant is entitled to credit "for the number of days spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2014). The version of this statute in effect at the time period in issue, 1981, similarly provided that a defendant "shall be given credit *** for time spent in custody as a result of the offense for which the sentence was imposed." Ill. Rev. Stat. 1981, ch. 38, par. 1005-8-7(b). A defendant who is in custody on one offense when he is charged with another offense is entitled to credit for time spent in simultaneous custody. *People v. Johnson*, 401 Ill. App. 3d 678, 682-83 (2010), citing *Robinson*, 172 Ill. 2d at 459. However, a defendant is not entitled to credit for time spent in custody while incarcerated in

another state as the result of a crime committed there, even if a detainer warrant is served on the defendant in that state, and is not entitled to credit for time served while incarcerated in another state for the time between the lodging of detainer against him and the time he waives extradition. *People v. Gardner*, 172 Ill. App. 3d 763, 768 (1988). Where a defendant is incarcerated in another state for a crime committed there, he is entitled to credit in Illinois from the date he is extradited to Illinois or waives such extradition. *People v. Elder*, 392 Ill. App. 3d 133, 139 (2009); *People v. Jones*, 236 Ill. App. 3d 244, 251-52 (1992); *Gardner*, 172 Ill. App. 3d at 768.

¶ 13 Here, defendant was detained in Wisconsin for crimes he committed there. At some point, he was extradited to Illinois or waived extradition. Defendant has not provided us with the date of extradition or waiver of extradition, and our review of the record has not revealed that information. However, we cannot ignore the fact that defendant was arraigned on August 25, 1981, and therefore, was in custody in Illinois on that date. In these circumstances, we find that defendant is entitled to credit from August 25, 1981, to the date he pleaded guilty, November 20, 1981, for a total of 87 days of credit.

¶ 14 We are mindful of defendant's argument that where a defendant is already in custody on an unrelated offense, the beginning point of his custody for purposes of calculating his credit is when he is charged with the new offense. However, the cases defendant cites in support of this proposition, *Johnson*, 401 Ill. App. 3d at 683, and *People v. Chamberlain*, 354 Ill. App. 3d 1070, 1075 (2005), involved situations where the defendants were already in custody in Illinois, not in another state. Because extradition was not an issue in those cases, they are distinguishable from the instant case and do not dictate our decision.

¶ 15 We also reject the State's argument, made in the alternative, that defendant may have already received credit for presentence custody. The State suggests that because the mittimus does not address the issue of credit and the transcript of the guilty plea hearing no longer exists, defendant cannot demonstrate that the trial court failed to give him credit. However, in our view, the fact that the mittimus does not address the issue of credit indicates that such credit was not awarded. The State further notes that the record contains a document that purports to be an amended mittimus, reducing defendant's sentence for murder to 50 years, and an accompanying document date stamped December 11, 1981, titled "Amended Judgment and Sentence," indicating that defendant's murder sentence was 50 years and that he was to be given credit "for time served from April 22, 1979 to December 11, 1981." We agree with defendant that the legitimacy of these documents is questionable. Nothing else in the record suggests that defendant's murder sentence was ever reduced from 70 to 50 years. As noted by the State, no other documentation, transcript, or information on the half sheet, from the Illinois Department of Corrections, or on the certified statement of conviction/disposition supports a finding that the trial court reduced defendant's sentence or awarded him presentence custody credit from April 22, 1979. Accordingly, we agree with defendant that the documents must be disregarded.

¶ 16 Defendant's second contention on appeal is that this court should order that the mittimus, which reflects three murder convictions, be corrected to reflect only one murder conviction, as only one death occurred. The State concedes the issue, noting that such a claim may be raised at any time and at any stage of court proceedings. *People v. Caballero*, 228 Ill. 2d 79, 88 (2008).

¶ 17 We agree with the parties that only one murder conviction can be affirmed under the one-act, one-crime rule of *People v. King*, 66 Ill. 2d 551, 566 (1977), and that only a conviction for

the most serious offense may be sustained. *People v. Fuller*, 205 Ill. 2d 308, 346 (2002); *People v. Walton*, 378 Ill. App. 3d 580, 590 (2007). Here, defendant was convicted of intentional murder, knowing murder, and felony murder. Because intentional murder involves the most culpable mental state, we vacate defendant's convictions for knowing murder and felony murder. *Fuller*, 205 Ill. 2d at 346-47. We order the mittimus corrected accordingly.

¶ 18 For the reasons explained above, we determine that defendant is entitled to 87 days of presentence custody credit and vacate two of defendant's three murder convictions. Under Supreme Court Rule 615(b) (eff. April 1, 2015), we order the mittimus modified to reflect one murder conviction and 87 days of credit.

¶ 19 Affirmed as modified; mittimus corrected.