

FIRST DIVISION
December 21, 2015

No. 1-14-0032

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. 02 CR 17752
	)	02 CR 29549
	)	03 CR 750
	)	03 CR 751
	)	03 CR 752
)	
DEANDRE DIXON,	)	Honorable
	)	Kevin M. Sheehan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LIU delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

¶ 1 **Held:** Denial of defendant's *pro se* motions affirmed; mittimuses corrected to reflect proper presentence custody credit.

¶ 2 Defendant, Deandre Dixon, appeals from orders of the circuit court of Cook County denying him leave to file a successive petition for relief in case number 02-CR-17752 under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq* (West 2012)), and summarily

dismissing his *pro se* petition for relief under the Act in case numbers 02-CR-29549, 03-CR-750, 03-CR-751, and 03-CR-752. On appeal, he does not raise any substantive issues concerning the circuit court's rulings, but contends that his mittimus should be corrected in each case to reflect the time he spent in presentence custody, and that the presentence custody accrued on each of his convictions should be aggregated to apply against his current term of imprisonment.

¶ 3 The record shows that following a bench trial on October 22, 2003, defendant was found guilty of armed violence, possession of a controlled substance with intent to deliver, and aggravated unlawful use of a weapon in case number 02-CR-17752. The trial court then sentenced defendant to 15 years' imprisonment, and awarded him credit for 49 days in presentence custody. This court affirmed that judgment on direct appeal. *People v. Dixon*, Nos. 1-03-3538 & 1-04-0269 (consl.) (2005) (unpublished order under Supreme Court Rule 23). Defendant subsequently filed a *pro se* postconviction petition in that case raising multiple claims of ineffective assistance of trial and appellate counsel, which the circuit court summarily dismissed. Defendant did not appeal that dismissal.

¶ 4 On January 14, 2004, defendant pleaded guilty to a charge of obstruction of justice in case number 02-CR-29549, for which he received one year of imprisonment, and was credited with 39 days spent in presentence custody. Defendant did not file a direct appeal in that case.

¶ 5 On January 9, 2004, defendant pleaded guilty to separate charges in three cases. In case number 03-CR-750, defendant pleaded guilty to armed robbery, and was sentenced to six years' imprisonment. Defendant also pleaded guilty to armed robbery in case number 03-CR-751, and was sentenced to six years' imprisonment, and in case number 03-CR-752, he pleaded guilty to

aggravated unlawful use of a weapon, and was sentenced to one year of imprisonment. The court entered these sentences on January 9, 2004, and ordered them to be served concurrently with each other and consecutive to the 15-year sentence imposed in case number 02-CR-17752 and the one-year term in case number 02-CR-29549. Defendant was credited with 379 days spent in presentence custody, and the court stayed the issuance of the mittimus until January 14, 2004.

¶ 6 On September 13, 2013, defendant filed a *pro se* postconviction petition listing all five of his cases in the caption. The circuit court issued two orders addressing defendant's petition, classifying it as a motion for leave to file a successive postconviction petition in case number 02-CR-17752, and a postconviction petition for the remaining four cases. In his petition, defendant contended that the Illinois Department of Corrections (IDOC) wrongly imposed a period of mandatory supervised release without the trial court's authorization. The circuit court analyzed the same issue in both orders, and denied defendant leave to file a successive postconviction petition in case number 02-CR-17752 and summarily dismissed his petition as to the remaining four cases.

¶ 7 On appeal, defendant does not address the merits of the circuit court's rulings, but solely contends that we should remand his cause or direct the circuit court to issue a corrected mittimus reflecting that in case number 02-CR-17752, he is entitled to credit for 54 days spent in presentence custody, that in case number 02-CR-29549, he is entitled to credit for 40 days spent in presentence custody, and that in case numbers 03-CR-750, 03-CR-751, and 03-CR-752, he is entitled to credit for 382 days spent in presentence custody. He also contends that this credit

should be aggregated for a total of 476 days of presentence custody credit, and applied to the consecutive and concurrent terms of imprisonment he is currently serving.

¶ 8 The State agrees that defendant's presentence custody credit should be aggregated and also with defendant's calculation of presentence custody in case numbers 02-CR-17752 and 02-CR-29549. However, the State contends that he is entitled to credit for only 377 days in case numbers 03-CR-750, 03-CR-751, and 03-CR-752, the days he spent in presentence custody between his arrest on December 22, 2002, and his sentencing on January 9, 2004.

¶ 9 We initially observe, and defendant concedes, that he did not raise these issues in his postconviction petition; however this court has held that because an amended mittimus may be issued at any time, we may consider defendant's requests as motions to amend the mittimus "in the interest of an orderly administration of justice." *People v. Wren*, 223 Ill. App. 3d 722, 730 (1992), quoting *People v. Scott*, 43 Ill. 2d 135, 142 (1969). Furthermore, remand is unnecessary where this court has the authority to correct the mittimus. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 71.

¶ 10 The only dispute in this case is whether defendant is entitled to 377 days or 382 days of presentence custody credit in case numbers 03-CR-750, 03-CR-751, and 03-CR-752. The record shows that defendant was sentenced in those cases on January 9, 2004, but the trial court stayed the issuance of the mittimus until January 14, 2004, to align with defendant's other cases. An order from January 9, 2004, indicates that defendant "is not to be sent to IDOC until other case is resolve [sic]," and defendant's mittimus indicates that it was entered on January 14, 2004.

¶ 11 Defendant contends that imprisonment occurs on the date the mittimus is issued, which occurred in this case on January 14, 2004. The State responds that the record shows defendant was sentenced on January 9, 2004, and the case was held over until January 14 "so that it [could] be on the same track as defendant's other cases."

¶ 12 The supreme court has held that "the sentence commences upon the issuance of the mittimus." *People v. Williams*, 239 Ill. 2d 503, 509 (2011). Under the Unified Code of Corrections, however, the date of the issuance should not be counted as a day of presentence custody. 730 ILCS 5/5-4.5-100(a) (West 2012); *Williams*, 239 Ill. 2d 503, 509 (2011). We, therefore, agree with defendant that he is entitled to 382 days of presentence custody credit for the days he spent in presentence custody between his arrest on December 28, 2012, up to, but not including, the date the court issued the mittimus on January 14, 2004. Although the State points out that the reports of proceedings from January 9 and January 14, 2004, are absent from the record filed on appeal, the order contained in the common law record plainly shows that the court stayed the issuance of the mittimus until January 14, despite the fact that defendant was sentenced on January 9. Accordingly, we find that defendant is entitled to presentence custody credit accruing until the date the trial court issued the mittimus for a total of 382 days.

¶ 13 We, therefore, order the clerk of the circuit court to correct defendant's mittimus in case number 02-CR-17752 to reflect presentence custody credit of 54 days that is aggregate to the credit awarded in 02-CR-29539, 03-CR-750, 03-CR-751, and 03-CR-752, correct defendant's mittimus in case number 02-CR-29539 to reflect presentence custody credit of 40 days that is aggregate to the credit awarded in 02-CR-17752, 03-CR-750, 03-CR-751, and 03-CR-752, and

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correct defendant's mittimus in case numbers 03-CR-750, 03-CR-751, and 03-CR-752 to reflect presentence custody credit of 382 days that is aggregate to the credit awarded in 02-CR-17752 and 02-CR-29539 for an aggregate of 476 days of presentence custody credit, and we affirm the judgment of the circuit court of Cook County in all other respects.

¶ 14 Affirmed; mittimuses corrected.