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2015 IL App (3d) 130577-U

Order filed May 1, 2015
Modified upon denial of rehearing May 22, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0577
)	Circuit No. 09-CF-92
ANDY JONES,)	Honorable
Defendant-Appellant.)	Carla Alessio-Policandriotes, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice McDade and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The mittimus and sentencing order are amended to reflect a total of 392 days of presentence custody credit against the defendant's prison sentences.
- ¶ 2 The defendant, Andy Jones, appeals from the trial court's order granting in part and denying in part his motion to amend the mittimus to award additional presentence custody credit. On appeal, the defendant argues that he is entitled to 77 additional days of custody credit against his prison sentence. We affirm as modified.

FACTS

¶ 3

¶ 4 The defendant pled guilty to five counts of identity theft (720 ILCS 5/16G-15(a)(1), (a)(4) (West 2008)). On count I, the trial court sentenced the defendant to 48 months' Treatment Alternatives for Safe Communities (TASC) probation. On counts II through V, the court sentenced the defendant to concurrent terms of 10 years' imprisonment. The court ordered the sentences to run concurrent with those imposed in DuPage County case No. 09-CF-719. The court awarded the defendant credit for 258 days of presentence custody and stayed the mittimus.

¶ 5 On March 26, 2010, the court issued a warrant for the defendant's arrest after he failed to appear for a treatment status hearing. Thereafter, the State filed a petition to revoke the defendant's probation.

¶ 6 On September 8, 2010, the court issued a writ of *habeas corpus* to the DuPage County sheriff to transport the defendant to the Will County circuit court for a hearing. On October 6, 2010, the defendant appeared in custody for a hearing on the State's petition to revoke probation. During the hearing, the State withdrew its petition, and the court continued the case for review of the State's prior motion to lift the stay of the mittimus and the defendant's motion to reconsider sentence.

¶ 7 On December 22, 2010, the defendant appeared in the custody of the DuPage County sheriff. Defense counsel stated that the defendant had been resentenced to TASC probation in DuPage County, and the court ordered that the defendant continue TASC probation in Will County. The court also denied the State's motion to lift the stay on the mittimus and discharged the writ of *habeas corpus* on the DuPage County sheriff.

¶ 8 On November 15, 2012, the State filed a motion to execute the mittimus and a petition to revoke the defendant's probation due to the defendant's failure to complete drug treatment and a

positive drug test. The defendant admitted to violating his probation, and the court granted the State's petition to revoke probation. The court imposed a concurrent sentence of 10 years' imprisonment on count I and lifted the stay on the mittimus on the remaining convictions.

¶ 9 On March 14, 2013, the defendant filed a motion to amend the mittimus arguing that he was entitled to an additional 195 days of "simultaneous custody" credit for the period of July 31, 2010, to February 10, 2011, which he spent in the custody of the DuPage County sheriff. The court agreed in part and issued an amended sentencing order *nunc pro tunc* that awarded the defendant credit from September 8 to October 6, 2010. The defendant appeals.

¶ 10 ANALYSIS

¶ 11 The defendant argues that he is entitled to additional presentence custody credit for the period between October 6 and December 22, 2010, for a total of 394 days of credit against his prison sentence. The State argues that the trial court awarded the appropriate amount of credit. We review a presentence custody credit issue *de novo*. *People v. Johnson*, 401 Ill. App. 3d 678, 680 (2010).

¶ 12 Section 5-4.5-100(b) of the Unified Code of Corrections provides a defendant with credit against his prison sentence 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 2008)). The credit calculation includes the day that the defendant is taken into custody and any partial day of custody, but excludes the day the defendant is sentenced. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 71; *People v. Smith*, 258 Ill. App. 3d 261, 267 (1994). Where a defendant is simultaneously in custody on two or more charges, the presentence custody credit applies against the sentences imposed on all of the charges which result in conviction. *People v. Robinson*, 172 Ill. 2d 452, 462-63 (1996). Where consecutive sentences are imposed, a defendant may only receive one day

of credit for each day spent in presentence custody against the aggregate consecutive sentences. *People v. Latona*, 184 Ill. 2d 260, 271-72 (1998).

¶ 13 In the instant case, the record establishes that the defendant was in the custody of the DuPage County sheriff when the trial court issued a writ of *habeas corpus* to transport the defendant to the Will County circuit court for proceedings in this case. This writ remained in effect until December 22, 2010. Nevertheless, the trial court gave the defendant sentencing credit only for the period between September 8, 2010, when the writ was issued, and October 6, 2010, when the State withdrew its petition to revoke probation. From October 6 to December 22, 2010, the date when the writ was discharged, the defendant was twice transported to the Will County circuit court for proceedings in this case. Because the writ remained in effect during this period, the defendant is entitled to an additional 76 days of presentence custody credit. Therefore, we amend the mittimus and sentencing order to reflect that the defendant's sentence is offset by a total of 392 days¹ of presentence custody credit.

¹ In his brief, the defendant asks this court to correct the mittimus and sentencing order to reflect an award of 394 days of presentence custody credit. However, this calculation appears to have mistakenly included September 25, 2009, and November 15, 2012. On September 25, 2009, defendant was sentenced to a term of probation and 10 years' imprisonment. The court stayed defendant's prison sentence, and awarded defendant 258 days' presentence custody credit. The trial court's calculation does not appear to include the date of sentencing; however, in his brief, defendant specifically stated that he was not contesting this period. Therefore, defendant has waived review of the 258-day period. Additionally, defendant is not entitled to presentence custody credit for November 15, 2012, the date his probation was revoked and he was resentenced to a prison term. *Alvarez*, 2012 IL App (1st) 092119, ¶ 71.

¶ 14

CONCLUSION

¶ 15

The judgment of the circuit court of Will County is affirmed as modified.

¶ 16

Affirmed as modified.