

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).

2015 IL App (3d) 140697-U

Order filed October 9, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

| | | |
|----------------------|---|-------------------------------|
| ABDUL LOVE, |) | Appeal from the Circuit Court |
| |) | of the 12th Judicial Circuit, |
| Plaintiff-Appellant, |) | Will County, Illinois. |
| |) | |
| v. |) | Appeal No. 3-14-0697 |
| |) | Circuit No. 12-MR-1807 |
| MARCUS HARDY, |) | |
| |) | The Honorable |
| Defendant-Appellee. |) | Roger Rickmon, |
| |) | Judge, presiding. |

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* In a case in which the defendant sought additional credit against his sentences for presentence incarceration time served, the appellate court ruled that under the principles of *People v. Latona*, 184 Ill. 2d 260 (1998), the circuit court properly granted the State's motion for summary judgment.

¶ 2 The defendant, Abdul Love, filed a *mandamus* petition in the circuit court in which he sought credit for an additional 1,511 days of presentence incarceration credit. The circuit court granted the State's summary judgment motion, and the defendant appealed. On appeal, the

defendant argues that the circuit court erred when it granted the State's summary judgment motion. We affirm.

¶ 3

FACTS

¶ 4

On November 23, 2009, the circuit court entered judgments of conviction against the defendant in circuit court cases 05-CF-3811 and 06-CF-160. In the former, the defendant was convicted of unlawful possession of over 900 grams of cocaine with the intent to deliver (720 ILCS 570/401(a)(2)(D) (West 2004)) and sentenced to 15 years of imprisonment. In the latter, the defendant was convicted of two counts of solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 2004)) and sentenced to concurrent prison terms of 25 years. Two mittimuses were entered; both stated that the defendant was to receive 1,511 days of credit for presentence incarceration and that the 15-year prison term was to be served consecutively to the concurrent 25-year prison terms.

¶ 5

On August 22, 2012, the defendant filed a *mandamus* petition in which he alleged that he was entitled to receive another 1,511 days of credit for presentence incarceration—3,022 days of credit total—because both mittimuses stated he was to receive 1,511 days of credit.

¶ 6

The defendant was deposed on April 1, 2014. He testified that he was arrested in circuit court case number 05-CF-3811 on October 5, 2005, and incarcerated in the Lake County jail, where he remained until early December 2009. During that time, on January 13, 2006, he was arraigned in circuit court case number 06-CF-160.

¶ 7

On June 19, 2014, the State filed a motion for summary judgment in which it alleged that the defendant was not entitled to receive this "double credit." The circuit court granted the motion after a hearing, and the defendant appealed.

¶ 8

ANALYSIS

¶ 9 On appeal, the defendant argues that the circuit court erred when it granted the State's motion for summary judgment. Specifically, the defendant alleges that he is entitled to receive an additional 1,511 days of credit for presentence incarceration because both mittimuses stated he was to receive that credit against his sentences.

¶ 10 We review a circuit court's grant of summary judgment *de novo*. *People ex rel. Department of Corrections v. Booth*, 215 Ill. 2d 416, 423 (2005).

¶ 11 *Mandamus* is an extreme remedy that is designed to compel a public official to perform a nondiscretionary, ministerial duty. *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 464 (2004). To be entitled to a writ of *mandamus*, the petitioner must establish "a clear right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ." *Id.* at 465.

¶ 12 At the time of the defendant's offenses, section 5-8-4(e)(4) of the Unified Code of Corrections provided that consecutive sentences are to be treated as a single term of imprisonment and that the offender shall receive credit against that aggregate sentence "for all time served in an institution since the commission of the offense or offenses and as a consequence thereof[.]" 730 ILCS 5/5-8-4(e)(4) (West 2004); *People v. Latona*, 184 Ill. 2d 260, 271 (1998). Our supreme court clarified in *Latona* that "[s]ince consecutive sentences are to be treated as a single term of imprisonment, it necessarily follows that defendants so sentenced should receive but one credit for each day actually spent in custody as a result of the offense or offenses for which they are ultimately sentenced." *Id.* Further, the supreme court stated:

"[T]o allow an offender sentenced to consecutive sentences
two credits-one for each sentence-not only contravenes the
legislative directive that his sentence shall be treated as a "single

term” of imprisonment, but also, in effect, gives that offender a double credit, when the sentences are aggregated, for each day previously served in custody. That cannot be what the legislature intended." *Id.*

¶ 13 In this case, the defendant was in custody on the possession charge when he solicited murder for hire. He served a total of 1,511 days in presentence custody, and he received a credit against his consecutive sentences for that time served. According to the clear, well-settled principles set forth in *Latona*, the defendant is not entitled to receive any more credit against his sentences. *Id.* Accordingly, we hold that the circuit court did not err when it granted the State's motion for summary judgment.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Will County is affirmed.

¶ 16 Affirmed.