

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).

FILED

January 12, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 130938-U

NO. 4-13-0938

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
JOHN WILLIAM POTTS,)	No. 12CF85
Defendant-Appellant.)	
)	Honorable
)	Paul G. Lawrence,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding defendant's request for additional presentence credit was unsupported by the record. The court further declined to address defendant's ineffective-assistance-of-counsel claim.

¶ 2 In May 2013, the trial court found defendant, John William Potts, guilty of two counts of aggravated battery (720 ILCS 5/12-3.05(d)(4) (West 2010)). In July 2013, the court sentenced defendant to two concurrent terms of seven years' imprisonment with credit for 77 days served in custody. Defendant appeals, alleging he is entitled to additional presentence credit for time served in custody. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 31, 2012, defendant was arrested and charged by information with two counts of aggravated battery (720 ILCS 5/12-3.05(d)(4) (West 2010)) for pushing and

spitting on a police officer and one count of assault (720 ILCS 5/12-1(a) (West 2010)) for throwing objects at his wife, Jeanette Potts. That same day, the trial court set bond at \$10,000, 10% to apply, and appointed the public defender. On February 1, 2012, defendant was released from custody after his wife posted \$1,000 bond under the depositor's name "Jeanette Blue."

¶ 5 At a March 2012 status hearing, defendant appeared in court with an assistant public defender and indicated he desired to hire private counsel. At a May 2012 pretrial hearing, defendant notified the court his attempt to hire private counsel fell through due to "hard times."

¶ 6 The trial court set a jury trial for December 18, 2012. On that date, defendant arrived at the courthouse but absconded prior to the commencement of his trial. The court issued a failure-to-appear warrant and set bond at \$20,000, 10% rule to apply. (We note, although the docket includes a file stamp entry indicating "[o]n State's motion, bond forfeited," the transcript from that session in the record does not include such a ruling or a future allotment for bond forfeiture hearing.)

¶ 7 On December 21, 2012, according to the presentence investigation report contained in the record, defendant was arrested in DeWitt County, Illinois, and the "McLean County warrant was removed from LEADS."

¶ 8 Docket entries indicate on March 13, 2013, the trial court set a status hearing for April 2013 and directed defense counsel to provide notice to defendant. On March 14, 2013, defense counsel filed a motion for writ of *habeas corpus ad prosequendum*, directing the DeWitt County sheriff to produce defendant at the April 2013 status hearing, which was granted.

¶ 9 In April 2013, defendant appeared with defense counsel at the status hearing. Counsel notified the trial court defendant was serving an unrelated sentence in DeWitt County

until May 5, 2013. Defendant questioned the effectiveness of defense counsel's representation and asked the court whether he would be able to get another attorney at his next hearing. The court advised defendant he must speak with the public defender's office to request a change of appointed counsel.

¶ 10 On May 5, 2013, the failure-to-appear warrant was executed and defendant was transported to McLean County and placed in custody. On May 6, 2013, the return on the failure-to-appear warrant was filed with the McLean County circuit clerk.

¶ 11 On May 14, 2013, the trial court held a bench trial wherein defendant was found guilty on both counts of aggravated battery (720 ILCS 5/12-3.05(d)(4) (West 2010)). (Defendant was acquitted of the assault charge.)

¶ 12 In July 2013, the trial court held a sentencing hearing. Defendant's presentence investigation report indicated defendant served 77 days in custody (2 days between January 31, 2012, and February 01, 2012, and 75 days between May 5, 2013, and July 18, 2013). Defendant asserted he was entitled to additional presentence credit for time served in custody from December 21, 2012, through May 4, 2013, because he was arrested on December 21, 2012, on the Mclean County failure-to-appear warrant while in DeWitt County. The court disagreed, concluding, based on the information before it, defendant returned to custody when the warrant was served on May 5, 2013. The court sentenced defendant to two concurrent terms of seven years' imprisonment with credit for 77 days served in custody. That same month, defendant filed a motion to reconsider sentence.

¶ 13 In September 2013, the trial court held a hearing on defendant's motion to reconsider sentence. Defendant argued he was entitled to additional presentence credit as he was

arrested on December 21, 2012, on the failure-to-appear warrant herein while in DeWitt County and was later charged with an unrelated DeWitt County offense. Defense counsel asserted,

"[T]he reason I writted him from DeWitt County was because he wasn't in custody on this case. I writted him from DeWitt County so that I could surrender him on the warrant because they weren't doing anything on it. That's why the writ was from the public defender's office and not from the State. So he should be getting credit from the Court date when he was writted from DeWitt County."

The court determined the record did not support (1) defendant's assertion he was arrested on the failure-to-appear warrant on December 21, 2012, or (2) defense counsel's assertion defendant was surrendered in exoneration of his bond prior to May 5, 2013. Therefore, the court concluded the award of 77 days' sentencing credit was correct and denied defendant's motion.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues he is entitled to additional presentence credit from December 21, 2012, through May 4, 2013, as he was arrested and placed in custody on the failure-to-appear warrant on December 21, 2012. In the alternative, defendant asserts defense counsel rendered ineffective assistance by failing to move to withdraw his bond, and therefore this court should (1) award presentence credit starting from March 13, 2013, the earliest date the record demonstrates defense counsel was aware defendant was being held in DeWitt County and failed to surrender him; and (2) remand for a hearing to determine whether defense counsel knew

of defendant's incarceration at an earlier date, warranting an award of additional presentence credit. We address these arguments in turn.

¶ 17 A. Simultaneous Custody

¶ 18 Defendant asserts he is entitled to additional presentence credit from December 21, 2012, through May 4, 2013, as he was arrested and placed in custody on the failure-to-appear warrant on December 21, 2012. Based on the record before us, we disagree.

¶ 19 Section 5-4.5-100(b) of the Unified Code of Corrections provides: "[An] offender shall be given credit on the determinate sentence *** of imprisonment for the time spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2010). The appellant bears the burden to provide a sufficiently complete record to support his or her claims. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959.

¶ 20 Here, the record on appeal does not support defendant's allegation he was arrested on the failure-to-appear warrant and placed in custody on December 21, 2012. On December 18, 2012, the trial court issued a failure-to-appear warrant and set bond at \$20,000, 10% rule to apply. On December 21, 2012, defendant was in custody in DeWitt County. On May 5, 2013, the failure-to-appear warrant was served and defendant was transported to McLean County and placed in custody. The record does not affirmatively indicate defendant was arrested on December 21, 2012, on the failure-to-appear warrant. Rather, the record indicates the warrant was served on May 5, 2013, after defendant completed an unrelated sentence in DeWitt County. The record also does not indicate the trial court expressly revoked defendant's bond, or defendant

withdrew his bond while in custody in DeWitt County and surrendered himself in the instant case. See *People v. Arnhold*, 115 Ill. 2d 379, 383, 504 N.E.2d 100, 101 (1987). Therefore, defendant's claim must fail as unsupported by the record.

¶ 21 B. Ineffective Assistance of Counsel

¶ 22 In the alternative, defendant argues defense counsel rendered ineffective assistance by failing to promptly move to withdraw his bond to receive simultaneous sentence credit. Defendant asserts this court should (1) award presentence credit starting from March 13, 2013, the earliest date the record demonstrates defense counsel was aware defendant was being held in DeWitt County and failed to surrender him; and (2) remand for a hearing to determine whether defense counsel knew of defendant's incarceration at an earlier date, warranting additional presentence credit. Based on the record before us, we decline defendant's invitation. See *People v. Blair*, 2015 IL App (4th) 130307, ¶ 47. Instead, we reference our decision in *People v. Durgan*, 346 Ill. App. 3d 1121, 1143, 806 N.E.2d 1233, 1250 (2004), where we highlighted the benefits of considering ineffective-assistance-of-counsel claims through collateral review. Collateral review under the Post-Conviction Hearing Act (725 ILCS 5/122-1 to 122-7 (West 2012)) provides a mechanism by which the pitfalls of reviewing defendant's ineffective-assistance-of-counsel claim in this proceeding can be avoided. Given we lack a record developed precisely for evaluating the ineffective-assistance-of-counsel claim, we reject defendant's suggestion that we reach his ineffective-assistance-of-counsel claim.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's award of 77 days' presentence credit as defendant's request for additional credit is unsupported by the record. We further

decline defendant's invitation to address his ineffective-assistance-of-counsel claim. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2012).

¶ 25 Affirmed.