

**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).

2014 IL App (4th) 130057-U  
NOS. 4-13-0057, 4-13-0058 cons.

**FILED**  
April 30, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

**IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT**

|                                      |   |                   |
|--------------------------------------|---|-------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from       |
| Plaintiff-Appellee,                  | ) | Circuit Court of  |
| v.                                   | ) | Pike County       |
| JOHN A. CRULL,                       | ) | Nos. 09CF56       |
| Defendant-Appellant.                 | ) | 10CF66            |
|                                      | ) |                   |
|                                      | ) | Honorable         |
|                                      | ) | Diane M. Lagoski, |
|                                      | ) | Judge Presiding.  |

JUSTICE Harris delivered the judgment of the court.  
Justices Holder White and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* We deny defendant's motion for summary remand because the Department of Corrections has the responsibility to award defendant credit for time served awaiting transfer to the Department's custody.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) for summary remand with directions to correct the sentencing judgment to include an additional seven days' credit against defendant's prison sentence.

¶ 3 **I. BACKGROUND**

¶ 4 In May 2009, the State charged defendant, John A. Crull, in Pike County case No. 09-CF-56 with aggravated criminal sexual abuse, a Class 2 felony (720 ILCS 5/12-16(d) (West 2008)). In January 2010, the trial court, pursuant to a negotiated guilty plea, sentenced defendant

to 48 months' probation, to be served concurrently with a sentence of 30 months' probation imposed in an unrelated case.

¶ 5 On August 5, 2010, the State charged defendant with indecent solicitation of a child, a Class 3 felony (count I) (720 ILCS 5/11-6(a) (West 2010)), and solicitation to meet a child, a Class 4 felony (count II) (720 ILCS 5/11-6.6(a) (West 2010)), in Pike County case No. 10-CF-66.

¶ 6 On August 11, 2010, the State filed a petition to revoke probation in Pike County case No. 09-CF-56, alleging defendant failed to report to his probation officer in June and July 2010, in violation of the terms of his probation. In October 2010, the matter proceeded to hearing, after which the trial court found the State had proved its petition.

¶ 7 In November 2010, the State and defendant entered into a negotiated plea agreement in Pike County case Nos. 09-CF-56, 10-CF-66, and two other cases not at issue in this appeal. Defendant agreed to plead guilty to both counts as alleged in Pike County case No. 10-CF-66. Pursuant to the plea agreement, the trial court sentenced defendant to 30 months' probation in Pike County case No. 10-CF-66, to be served concurrently with a term of 48 months' probation in Pike County case No. 09-CF-56. In September 2012, the State filed an amended petition to revoke defendant's probation in Pike County case Nos. 09-CF-56 and 10-CF-66. During an October 2012 hearing on the State's petition to revoke, defendant admitted the allegations in the State's petition. Thereafter, the trial court ordered an updated presentence investigation report and set the matter for resentencing.

¶ 8 At the November 2012 resentencing hearing, the trial court sentenced defendant to concurrent terms of (1) 50 months' imprisonment in Pike County case No. 09-CF-56, (2) 3 years' imprisonment on count I in Pike County case No. 10-CF-66, and (3) 3 years' imprisonment

on count II in Pike County case No. 10-CF-66. The court awarded defendant credit for time served—166 days in Pike County case No. 09-CF-56 and 110 days (from August 6, 2010, through November 24, 2010) in Pike County case No. 10-CF-66. At the conclusion of this hearing, the trial court remanded defendant to the custody of the Pike County jail, where he would await transport to the Illinois Department of Corrections (DOC). A printout from the DOC website shows defendant's "admission date" as November 27, 2012.

¶ 9 In November 2012, defendant filed his motion to reconsider sentence in both Pike County case No. 09-CF-56 and Pike County case No. 10-CF-66, which the trial court denied following a January 2013 hearing.

¶ 10 These appeals followed. On defendant's motion, we consolidated the two cases for review.

¶ 11 II. ANALYSIS

¶ 12 In its motion for summary remand, OSAD contends defendant is entitled to seven additional days of credit against his sentence because he was resentenced on November 20, 2012, but not received by DOC until November 27, 2012. Thus, OSAD argues, summary remand is proper for correction of the sentencing judgment to reflect an additional seven days of presentence credit. We disagree.

¶ 13 In *People v. Rinehart*, 406 Ill. App. 3d 272, 282, 943 N.E.2d 698, 707 (2010), *vacated on other grounds*, 2012 IL 111719, 962 N.E.2d 444, the defendant argued he was entitled to one additional day of credit against his sentence because he was not transferred to DOC custody until the day after he was sentenced. This court rejected the defendant's argument, explaining as follows:

"If we accept defendant's argument, we give every criminal defendant who is not transferred to DOC on the date of sentencing a sentence-credit issue for appeal. This action is inconsistent with the goal of judicial economy. Trial courts cannot predict or control when DOC will take custody of a criminal defendant after sentencing. They should determine sentencing as if DOC will take custody the day of sentencing. DOC then should add any additional days the defendant remained in custody at the county jail awaiting transfer to DOC's custody in determining the time-served credit to which the defendant is entitled.

In this case, we find no error in the trial court's failure to predict defendant's February 29, 2008, transfer to DOC in calculating the presentence credit. We leave the matter to DOC to include that day in defendant's time-served calculation." *Id.*

¶ 14 In this case, the trial court awarded defendant sentence credit for time served in custody before resentencing. As in *Rinehart*, defendant argues he is entitled to seven additional days of presentence credit because he was resentenced on November 20, 2012, but DOC did not obtain custody of him until November 27, 2012. Defendant relies on a printout from the DOC website, showing his "admission date" was November 27, 2012. See *People v. Peterson*, 372 Ill. App. 3d 1010, 1019, 868 N.E.2d 329, 336 (2007) (appellate court may take judicial notice of DOC records).

¶ 15 In the interest of judicial economy, we reject defendant's argument and find no error in the trial court's failure to predict defendant's November 27, 2012, transfer to DOC. Trial

courts should determine sentencing as if DOC will take custody the same day. DOC has the responsibility to award a defendant credit for time served while the defendant awaits transfer to DOC custody. Accordingly, we leave the matter to DOC to include the seven days during which defendant remained in the Pike County jail awaiting transfer to DOC in its calculation of time-served credit.

¶ 16

### III. CONCLUSION

¶ 17

We deny OSAD's motion for summary remand.

¶ 18

Motion denied.