

No. 1-12-1638

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. 07 CR 2621
)	09 CR 12768
)	
DEREK SPAN,)	Honorable
)	Steven Goebel,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Howse and Justice Epstein concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant received consecutive sentences, trial court properly reduced presentence custody credit from 319 days to 98 days; affirmed.
- ¶ 2 Defendant Derek Span appeals from an order of the circuit court denying leave to file a petition for *mandamus* and correcting defendant's mittimus to reflect 98 days of presentence custody credit, instead of the 319 days of credit that defendant received when he was sentenced. On appeal, defendant contends the trial court erred by reducing his presentence credit because he

had been in presentence custody simultaneously for two unrelated charges and therefore was entitled to credit for both offenses. We affirm.

¶ 3 In 2007, defendant was charged with aggravated battery with a firearm under case number 07 CR 02621 01 (the 2007 case). On August 11, 2009, while in custody for the 2007 case, defendant was arraigned for the offense of aggravated battery of a government employee under case number 09 CR 12768 01 (the 2009 case). On January 19, 2010, defendant pled guilty to the offense in the 2007 case, aggravated battery with a firearm, and was sentenced to six years in prison. Defendant received 1,097 days in presentence custody credit.¹ On April 27, 2010, defendant pled guilty to the offense in the 2009 case and was sentenced to two years in prison. Defendant received 319 days of presentence custody credit. The mittimus stated that the sentence was consecutive to the sentence imposed in the 2007 case.

¶ 4 Apparently, once defendant was in prison, the Illinois Department of Corrections (IDOC) refused to award defendant all of the credit that was reflected on his mittimus. In May 2011, defendant filed a motion for a corrected mittimus, asking for a credit of 1,097 days on the 2007 case and 319 days on the 2009 case. On June 15, 2011, the circuit court denied defendant's motion, stating that the mittimus reflected that defendant was already given the credit he was requesting.

¶ 5 On January 5, 2012, defendant, acting *pro se*, filed a motion for leave to file a petition for *mandamus*, asserting that the Lawrence Correctional Center was refusing to award defendant both the 1,097 days of credit he earned from the 2007 case and the 319 days of credit he earned

¹ The exact date when defendant began presentence custody for the 2007 case is not in the record. However, the parties agree that defendant earned 1,097 days of credit for the 2007 case. Only the amount of credit defendant is entitled to for the 2009 case is at issue.

from the 2009 case. Defendant contended he was entitled to this credit because he had been simultaneously in custody on two unrelated charges.

¶ 6 At a proceeding on April 12, 2012, the State asserted, and defense counsel agreed, that defendant had actually received too much presentence custody credit for the 2009 case. Under *People v. Latona*, 184 Ill. 2d 260 (1998), because defendant's sentences were consecutive, he earned 1,097 days of credit for the time that the two cases were running simultaneously, to be applied to the 2007 case, but only an additional 98 days for the period between when he pled guilty to the offense in the 2007 case and when he pled guilty to the offense in the 2009 case. The court agreed it had been incorrect for defendant to have received duplicative credit for the two cases, and stated that defendant could only receive credit for the amount of time he was in custody. The court denied defendant leave to file a petition for *mandamus* and corrected the mittimus to reflect that defendant was entitled to 1,097 days of credit for the 2007 case and 98 days of credit for the 2009 case.

¶ 7 Likely because defendant had not yet received notice of the above proceeding, on April 24, 2012, defendant, again acting *pro se*, filed a motion for rule to show cause, motion for leave to file an amended petition for *mandamus*, and an amended petition for *mandamus*. Defendant asserted the same claim as in his previous filing.

¶ 8 At a proceeding on May 1, 2012, the court stated it had previously ruled on defendant's *pro se* motion and that it believed its ruling and defendant's filing had crossed in the mail. The court denied defendant's motion for leave to file a petition for *mandamus* and stated the previous order was to stand.

¶ 9 Subsequently, on May 15, 2012, defendant filed a notice of appeal, challenging the denial of a writ of *mandamus*. The notice of appeal was mailed on May 9, 2012.

¶ 10 In this court, defendant contends the trial court improperly modified his mittimus when it reduced the amount of presentence custody credit that he received at sentencing. Citing *People v. Robinson*, 172 Ill. 2d 452 (1996), defendant argues that his credit for the 2009 case should include the time he was in simultaneous custody for the 2007 case, for a total of 319 days.

¶ 11 We review *de novo* the question of whether a defendant's mittimus should be amended. *People v. Harris*, 2012 IL App (1st) 092251, ¶ 34.

¶ 12 Section 5-8-7(b) of the Unified Code of Corrections (Code) provides for a defendant to receive credit for time spent in custody as a result of the offense for which the sentence was imposed. 730 ILCS 5/5-8-7(b) (West 2008). However, the calculation of credit for consecutive sentences is governed by section 5-8-4(e)(4) of the Code, which states that the Department of Corrections must treat consecutive sentences as a "single term" of imprisonment. 730 ILCS 5/5-8-4(e)(4) (West 2008); *Latona*, 184 Ill. 2d at 270. A defendant is awarded credit "against the aggregate***term of imprisonment 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 2008). Because consecutive sentences are treated as a single term of imprisonment, a defendant who receives consecutive sentences should receive only one credit for each day he actually spent in custody as result of the offense or offenses for which he is ultimately sentenced. *Latona*, 184 Ill. 2d at 271. To the extent that a defendant sentenced to consecutive sentences had been previously incarcerated on more than one offense simultaneously, he should be given credit only once for actual days served. *Id.* If the defendant spent additional, nonsimultaneous time in presentence

custody on one offense or the other, he is entitled to a single credit for that time as well. *Id.* at 271-72.

¶ 13 Applying this framework to defendant, the court correctly reduced his credit on the 2009 case to 98 days because his sentences were consecutive. As such, they are treated as a single term of imprisonment and defendant could receive only one credit for each day he actually spent in custody for the offenses. Until defendant was sentenced on January 19, 2010 for the 2007 case, all of his time in presentence custody only went towards the 2007 case, for a total of 1,097 days. From January 19, 2010 until he was sentenced for the 2009 case on April 27, 2010, his time in presentence custody applied to his 2009 case, for a total of 98 days. Defendant seeks to include the time when he was in custody for both offenses—from August 11, 2009 until January 19, 2010—to his calculation of credit for the 2009 case, in addition to the 2007 case. This he cannot do. Allowing a defendant sentenced to consecutive sentences two credits, one for each sentence, contravenes the legislative directive that his sentence be treated as a "single term" of imprisonment. *Id.* at 271. Giving defendant the double credit he requests would frustrate the legislature's intent. See *Id.* See also *People v. Lenoir*, 2013 IL App (1st) 113615, ¶ 12 (relying on *Latona* to note that the parties correctly agreed that the defendant could not receive double credit where he received consecutive sentences); *People v. Cortez*, 2012 IL App (1st) 102184, ¶ 11 (relying on *Latona* to note that the trial court improperly awarded the defendant sentencing credit for days spent in custody for a prior conviction).

¶ 14 We reject defendant's reliance on *People v. Robinson*, 172 Ill. 2d 452 (1996) and three other cases that followed *Robinson*: *People v. Johnson*, 401 Ill. App. 3d 678 (2010); *People v. Chamberlain*, 354 Ill. App. 3d 1070 (2005); and *People v. Spencer*, 347 Ill. App. 3d 483 (2004).

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Neither *Robinson* nor the other cases cited by defendant involved defendants who received consecutive sentences, and so those cases do not apply here. See *Latona*, 184 Ill. 2d at 270 (stating that *Robinson* does not apply to calculating credit for consecutive sentences).

¶ 15 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 16 Affirmed.