2017 IL App (1st) 151378-U

No. 1-15-1378

Order filed November 30, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 2978
	)	
NATEDON HENDERSON,	)	Honorable
	)	Joseph Michael Claps,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Burke and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: We vacate the judgment of the circuit court and dismiss defendant's appeal where the circuit court was without jurisdiction to consider the motion for an order correcting the mittimus *nunc pro tunc* and the facts of the case do not give rise to retained jurisdiction.

¶ 2 Defendant Natedon Henderson was charged by information with one count of residential burglary (720 ILCS 5/19-3(a) (West 2012)), occurring on May 14, 2012, in Chicago. While in custody awaiting trial, defendant took and passed the General Education Development (GED)

test on April 2 and 3, 2013. Approximately one year later, on April 1, 2014, defendant pleaded guilty to residential burglary and received a six-year prison sentence with two years of mandatory supervised release. The circuit court also imposed various fines and fees in the amount of $449, and credited defendant with 436 days spent in presentence incarceration. Defendant did not file a motion to withdraw his guilty plea.

¶ 3 In January 2015, defendant filed a *pro se* motion for an order correcting the mittimus *nunc pro tunc* requesting 60 days of sentencing credit for having obtained his GED while in custody, pursuant to 730 ILCS 5/3-6-3(a)(4.1) (West 2014). Included with the motion were defendant's GED test results and a letter from a program administrator stating that he had passed. The circuit court denied the motion on March 16, 2015, stating it did not "believe the statute allowing this awarding makes [defendant] eligible because of [defendant's] background." Defendant filed a notice of appeal, which was file stamped April 16, 2015.

¶ 4 On appeal, in defendant's opening brief filed on May 17, 2017, he requested 60 days of sentencing credit for having obtained his GED while in custody. The State responded, in its brief filed on July 31, 2017, that because defendant's prison sentence and term of mandatory supervised release have expired, the issue is moot. Defendant has replied acknowledging the issue is now moot and contending that this court need not decide the merits.[1] Defendant further argues, and the State agrees, he is entitled to credit for monetary assessments imposed.

¶ 5 As a threshold matter, although the parties have not raised the issue, we must first determine whether we have jurisdiction from the trial court's denial of defendant's motion for an

[1] The website for the Illinois Department of Corrections reflects that defendant's sentence in this case has been "discharged." See *People v. Gipson*, 2015 IL App (1st) 122451, ¶ 66 (taking judicial notice of information appearing on the Illinois Department of Corrections' website).

order correcting the mittimus *nunc pro tunc*. "A reviewing court has an independent duty to consider issues of jurisdiction, regardless of whether either party has raised them." *People v. Smith*, 228 Ill. 2d 95, 104 (2008). Ordinarily, trial courts lose jurisdiction to alter a sentence after 30 days. *People v. Flowers*, 208 Ill. 2d 291, 303 (2003); *People v. Grigorov*, 2017 IL App (1st) 143274, ¶ 5. Here, defendant pleaded guilty on April 1, 2014, and filed his motion for an order correcting the mittimus *nunc pro tunc* in January 2015. By the time the trial court had denied defendant's motion, more than 30 days had passed and it had already lost jurisdiction over the matter. See *Flowers*, 208 Ill. 2d at 306-07.

¶ 6 However, an exception to this rule is found when a defendant presents a free-standing, collateral action. See *Grigorov*, 2017 IL App (1st) 143274, ¶ 5; *People v. Mingo*, 403 Ill. App. 3d 968, 970-71 (2010). Therefore, we must determine whether the language of section 3-6-3(a)(4.1) of the Unified Code of Corrections (Code) provides for a free-standing, collateral action such that the trial court was able to consider defendant's claim beyond 30 days. See *Mingo*, 403 Ill. App. 3d at 971 (determining whether the language of section 5-9-2 of the Code allows for a free-standing, collateral action).

¶ 7 Section 3-6-3(a)(4.1) allows for any prisoner who completes his GED while in custody pending trial to be awarded 60 days of good-conduct credit, unless that inmate has previously received his high school diploma or GED. See 730 ILCS 5/3-6-3(a)(4.1) (West 2014). Specifically, the section states, "[t]he Department may also award 60 days of sentence credit to any committed person who passed the high school level Test of General Educational Development (GED) while he or she was held in pre-trial detention prior to the current commitment to the Department of Corrections." *Id.* The plain language of section 3-6-3(a)(4.1)

directs the Department of Corrections to allow for sentence credit and does not mention—or otherwise contemplate—any involvement of the circuit court. Accordingly, based on this statutory language, section 3-6-3(a)(4.1) does not provide a free-standing, collateral action.

¶ 8 Further, trial courts retain jurisdiction to correct insubstantial or clerical errors, including motions to correct the mittimus *nunc pro tunc*. See *People v. Griffin*, 2017 IL App (1st) 143800, ¶ 12 (holding the trial court had jurisdiction to consider the defendant's motion to correct the mittimus *nunc pro tunc* where he alleged the wrong custody date was used for purposes of determining his presentencing detention credit). Here, unlike the defendant in *Griffin*, defendant did not allege a mere clerical error by the trial court, rather he argued in his motion for an order correcting the mittimus *nunc pro tunc* he is statutorily entitled to additional sentencing credit based on having obtained his GED while in custody pending trial. "An order entered *nunc pro tunc* may not supply omitted judicial action or correct judicial errors under the pretext of correcting clerical errors." *People v. Jones*, 2016 IL App (1st) 142582, ¶ 12. Consequently, the trial court was without jurisdiction to consider defendant's motion for an order correcting the mittimus *nunc pro tunc*, and we, in turn, have no authority to consider the merits of the appeal. See *Flowers*, 208 Ill. 2d at 306-07; *People v. Bailey*, 2014 IL 115459, ¶ 29. We may not go forward to consider the substantive merits of any claim. Instead, we must vacate the trial court's judgment and dismiss defendant's appeal. *Flowers*, 208 Ill. 2d at 306-07.

¶ 9 Defendant, for the first time on appeal, seeks to offset certain fines imposed with the $5 *per diem* credit for the 436 days he spent in presentence incarceration. He did not include this issue in his motion for an order correcting the mittimus *nunc pro tunc* or otherwise raise the issue in the trial court. He argues that, under *People v. Caballero*, 228 Ill. 2d 79, 88 (2008), claims for

statutory monetary credit pursuant to section 110-14 of the Code of Criminal Procedure of 1963 may be raised at any time and we are able to address this issue. Further, defendant's argument also seeks to substantively challenge an imposed fee as actually being a fine. The State agrees defendant is entitled to credit for monetary assessments imposed.

¶ 10 We disagree with the parties that we are able to grant the relief for monetary assessments that defendant requests. While *Caballero* does allow for a section 110-14 claim to be raised at any time and even "piggybacked" onto an unrelated claim, the claim must still be a part of a "properly filed appeal." *Griffin*, 2017 IL App (1st) 143800, ¶ 25. As we noted in *Griffin*, "this court lacks authority to hear [the defendant's] appeal in the first instance because the only judgment entered by the trial court is the one from which appeal is foreclosed." *Id.* As we observed above, the only matter properly before us is the question of the trial court's jurisdiction. Because we do not have authority to consider the merits of defendant's motion for an order correcting the mittimus *nunc pro tunc*, we are likewise unable to grant the relief for monetary credit, including the claim under section 110-14. See *id.*

¶ 11 For the reasons set forth above, we vacate the judgment of the circuit court and dismiss defendant's appeal. As we do not have authority to consider the merits of defendant's motion for an order correcting the mittimus *nunc pro tunc*, we cannot address his claim for monetary credit.

¶ 12 Judgment vacated; appeal dismissed.