

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).

2013 IL App (4th) 120307-U

NO. 4-12-0307

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 23, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
CHARLES W. MOORE,)	No. 04CF819
Defendant-Appellant.)	
)	Honorable
)	James R. Coryell,
)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed, concluding that the trial court did not comply with the appellate court's November 2011 mandate when it reduced the defendant's presentence custody credit from 405 days to 311 days.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) to remand defendant's case to the trial court because the trial court entered an amended sentencing judgment awarding defendant 311 days' sentencing credit, not the 405 days' credit reflected in the original sentencing judgment or ordered in this court's November 2011 mandate. We agree that the court did not comply with our mandate, vacate the trial court's February 2012 amended sentencing judgment, and remand.

¶ 3 I. BACKGROUND

¶ 4 In July 2004, the State charged defendant, Charles W. Moore, with burglary (720

ILCS 5/19-1(a) (West 2004)), a Class 2 felony, for stealing vodka from a Kroger grocery store in Decatur. Defendant entered a drug-court program in lieu of trial and sentencing. As part of the program, defendant entered residential treatment. Defendant was unsuccessful in the program and was convicted at a September 2007 stipulated bench trial.

¶ 5 In October 2007, the trial court held a sentencing hearing. Defense counsel informed the court that defendant had been in custody for 405 days, including treatment time. The State agreed that defendant was entitled to 405 days of credit. The court asked the State whether it had any objection to credit for treatment time. The State responded, "That's correct." The court thereafter sentenced defendant to 10 years in prison and 3 years of mandatory supervised release (MSR), awarding him credit for 405 days in custody. Defendant's sentence was to run consecutive to a nine-year sentence imposed in Macon County case No. 06-CF-486. The October 2007 written judgment states that "defendant is entitled to credit for time actually served in custody of 405 days as of the sentencing date of October 19, 2007." Defendant appealed, and this court affirmed defendant's sentence. *People v. Moore*, No. 4-08-0041 (Sept. 19, 2008) (unpublished summary order pursuant to Supreme Court Rule 23).

¶ 6 In January 2010, defendant filed a motion to amend the sentencing judgment in No. 04-CF-819, claiming that Graham Correctional Center failed to apply 405 days of sentencing credit awarded by the trial court. The trial court denied the motion, and defendant appealed. The State filed a brief in which it proposed the following: "The judgment could document the agreed fact that none of [defendant's] 405 day's [*sic*] awarded credit in this case have counted any time already credited against the consecutive sentence from case No. 06-CF-486." The State conceded that "[d]efendant should receive nothing other than the prison-required clarification that none of

his 405 days' [(sic)] already awarded credit in the present case reflect any time credited against his consecutive sentence from case No. 06-CF-486."

¶ 7 As a result, in November 2011, this court ordered, as follows:

"In accordance with the State's concession, ***, we remand this case to the trial court with directions to amend the sentencing judgment to include language sufficient to clarify that defendant is entitled to 405 days' credit, which does not include periods of simultaneous custody with those dates for which defendant was awarded credit in No. 06-CF-486. Because defendant has failed to demonstrate he is entitled to any further sentencing credit, we decline to award the same." *People v. Moore*, No. 4-10-1008, slip at 2, (Nov. 9, 2011) (unpublished summary order pursuant to Supreme Court Rule 23).

¶ 8 In February 2012, the trial court held a hearing on remand. Defendant's counsel offered that defendant was in custody (1) from his arrest on July 8, 2004, through October 15, 2004; (2) from March 18, 2005, to October 7, 2005; and (3) February 27, 2006, through March 5, 2006, for a total of 311 days. Counsel offered that defendant was in residential drug treatment from March 18, 2005, through October 7, 2005. The court amended the sentencing order to reflect sentencing credit for 311 days for time in custody.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues that "the trial court had no authority to go beyond this Court's

specific directive that [he] is entitled to 405 days['] credit" and his "mittimus should be corrected to reflect the 405 days['] sentence credit set forth in the original sentencing judgement and this Court's mandate." The State asserts "the only dates defendant spent in 'custody' for sentence credit purposes was from July 8, 2004, through October 15, 2004, and March 3, 2006, through March 5, 2006" and the "appropriate disposition would be permitting the trial court on remand to recalculate defendant's sentence credit."

¶ 12 "[A] trial court must obey the clear and unambiguous directions in a mandate issued by a reviewing court." *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276, 442 N.E.2d 185, 188 (1982). A reviewing court's mandate requires the trial court to take action in compliance with the mandate, and the "trial court lacks the authority to exceed the scope of the mandate." *People v. Winters*, 349 Ill. App. 3d 747, 749-50, 812 N.E.2d 737, 739 (2004).

¶ 13 At the October 2007 sentencing hearing, the State conceded that defendant was entitled to 405 days of credit, including treatment time. In the prior appeal, the State did not argue that defendant was not entitled to credit for time spent in drug treatment. Rather, it conceded defendant was entitled to 405 days of credit and that the credit did not reflect time in custody in Macon County case No. 06-CF-486.

¶ 14 Our November 2011 mandate ordered that defendant was to receive 405 days of sentence credit and for the trial court to include clarifying language that this 405 days of credit does not include periods of which defendant was awarded sentencing credit in No. 06-CF-486. The court exceeded the scope of the mandate by conducting a hearing to redetermine the periods defendant was in custody and reducing defendant's credit below 405 days. The court's February 2012 amended sentencing judgement must be vacated.

¶ 15

III. CONCLUSION

¶ 16 For the reasons stated, we vacate the trial court's amended sentencing judgment and remand with directions to amend the sentencing judgment to state as follows: "Defendant is entitled to 405 days of credit in Macon County case No. 04-CF-819. None of this 405 days of credit includes periods of simultaneous custody with those dates for which defendant was awarded credit in Macon County case No. 06-CF-486, *i.e.*, this 405 days' credit is exclusive to this case and in addition to any credit award in Macon County case No. 06-CF-486."

¶ 17 Vacated and remanded with directions.