2014 IL App (5th) 120206-U

NO. 5-12-0206

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Effingham County.
	)	
v.	)	No. 09-CF-155
	)	
JAMES E. MEYER,	)	Honorable
	)	Sherri L. E. Tungate,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Presiding Justice Welch and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant is entitled to additional presentence credit not reflected in negotiated plea and original sentencing order.

¶ 2 The defendant, James E. Meyer, appeals the order of the circuit court of Effingham County that denied his *pro se* motion to amend the mittimus in the instant case. For the reasons that follow, we reverse the order of the circuit court and modify the mittimus in the instant case to provide the defendant with 742 days of presentence credit.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal are as follows. On July 15, 2009, the defendant was charged by indictment in Effingham County in case number

09-CF-155 with armed robbery and aggravated robbery as the result of an incident that occurred in the village of Watson on April 24, 2009. Also on July 15, 2009, an arrest warrant issued for the defendant, setting bail at $150,000. At the time of the April 24, 2009, robbery, the defendant was on parole pursuant to a federal conviction for conspiracy to make counterfeit money. By July 15, 2009, that parole had been revoked, for reasons that are not contained in the record on appeal, and the defendant was again in the custody of the Federal Bureau of Prisons, where he remained until he was remanded to the Effingham County jail pursuant to the indictment and arrest warrant in this case. Subsequently, an arrest card was filed, noting the date of the defendant's arrest in Effingham County in case number 09-CF-155 as March 2, 2011.[1] On July 27, 2011, while still in state custody at the county jail, the defendant entered into a negotiated plea of guilty to the indictment count alleging aggravated robbery. The defendant was sentenced to, *inter alia*, a nine-year term in the Illinois Department of Corrections. After the terms of the plea agreement were presented to the trial judge by the State, counsel for the defendant noted that the parties had "agreed" that the defendant would receive credit for the time he served in the county jail between March 2, 2011, and July 27, 2011, a total of 148 days. No mention was made of any credit for the time the defendant spent in federal custody after the filing of the indictment and the arrest warrant in this cause. Ultimately, the trial judge accepted the

[1]It is not clear from the record if the defendant was in federal custody or in state custody between February 11, 2011, and March 2, 2011; however, it is undisputed that he was in custody during that time.

defendant's guilty plea and on the following day issued a judgment that reflected the agreed sentence and agreed credit for time served.

¶ 5 On January 30, 2012, the defendant filed, *pro se*, a motion to amend the mittimus, claiming he was entitled to additional presentence credit for the days he was in federal custody, beginning on the day of the filing of the indictment and the arrest warrant in this case. In the motion, the defendant alleged that on July 27, 2011, the date on which he entered into the plea agreement, he "clearly thought that he would get credit from the day the warrant was issued." Following a hearing on the motion, the trial judge denied the defendant's motion, and this timely appeal followed.

¶ 6 ANALYSIS

¶ 7 We review *de novo* the denial of a motion to amend a mittimus. *People v. Johnson*, 401 Ill. App. 3d 678, 680 (2010). On appeal, the defendant contends that his agreement to only 148 days of credit notwithstanding, he is entitled to presentence credit for time spent in custody from the date he was charged and the arrest warrant issued in this case, July 15, 2009, until the date of his sentence, July 27, 2011, a total of 742 days. He claims such credit is mandatory under subsection (b) of section 5-8-7 of the Unified Code of Corrections (730 ILCS 5/5-8-7(b) (West 2008)) and that any sentence that does not include such credit is void. He also claims that because the credit is mandatory, it cannot be negotiated away as part of a plea agreement. Because voluminous case law supports the position taken by the defendant, we agree. In *People v. Scheib*, 76 Ill. 2d 244, 250 (1979), the Supreme Court of Illinois held that subsection (b) "applies, generally, whenever a sentence of imprisonment is imposed, and it *requires* that credit be given for all time spent

in custody for the same offense." (Emphasis in original.) In *People v. Roberson*, 212 Ill. 2d 430, 440 (2004), the Supreme Court of Illinois held that "a sentence in conflict with a statutory guideline such as subsection (b) is void and may be challenged at any time." In light of this authority from the Supreme Court of Illinois, which is directly on point and specifically addresses subsection (b)–the subsection at issue in this case–there is no merit to, or support for, the State's argument that in the case at bar the sentencing credit was not required, and that therefore the portion of the defendant's sentence that conflicts with subsection (b) is merely voidable, not void. Accordingly, the State's forfeiture argument, which relies upon the sentence in this case being voidable, rather than void, fails. See also *People v. Hernandez*, 345 Ill. App. 3d 163, 170 (2004) (credit is mandatory; general forfeiture rules do not apply).

¶ 8 Moreover, we also reject the State's argument that, forfeiture notwithstanding, the defendant is not entitled, on the merits, to credit pursuant to subsection (b). In *People v. Robinson*, 172 Ill. 2d 452, 462-63 (1996), the Supreme Court of Illinois held that when a defendant is in simultaneous presentence custody on two unrelated charges, that defendant is entitled by subsection (b) to credit on both offenses. In *People v. Spencer*, 347 Ill. App. 3d 483, 490-91 (2004), this court held that the principles announced in *Robinson* are also applicable to situations such as those in the case at bar, wherein a defendant is in custody serving a sentence for one crime at the same time he or she is in presentence custody on an unrelated charge. In *People v. Johnson*, 401 Ill. App. 3d 678, 684 (2010), our colleagues in the Second District noted in a well-reasoned and detailed opinion that pursuant to *People v. Chamberlain*, 354 Ill. App. 3d 1070, 1075 (2005), credit for simultaneous custody

begins on the date a defendant is charged, because that is when presentence custody on the new charge begins. The *Johnson* court also correctly held that a plea agreement that does not include the credit that is mandatory under subsection (b) is void to the extent that it denies that credit. 401 Ill. App. 3d at 683. Accordingly, we reject the State's argument that the terms of the plea agreement should control this case and that the denial of the defendant's motion should be affirmed on that basis. In addition, we agree with the defendant that there is no support for the proposition that because the defendant was in federal custody, rather than state custody, during most of the time at issue, he is not entitled to credit. As the defendant correctly notes, the case cited by the State, *People v. Wills*, 251 Ill. App. 3d 640, 647 (1993), never stood for such a broad principle of law, and even if it had, it has now been implicitly overruled by both *Robinson* and *Spencer*. Applying the above principles to the case at bar, the defendant is entitled to credit from the date he was charged and the arrest warrant issued in this case, July 15, 2009, until the date of his sentence, July 27, 2011, a total of 742 days, because he was in either federal or state custody that entire time, and subsection (b) mandates that he receive credit accordingly.

¶ 9 CONCLUSION

¶ 10 For the foregoing reasons, we reverse the order of the circuit court of Effingham County and, pursuant to Supreme Court Rule 615(b), modify the mittimus in the instant case to provide the defendant with 742 days of presentence credit.

¶ 11 Reversed; mittimus modified to provide defendant with 742 days of presentence credit.