

NOTICE

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 190912-U
NOS. 4-19-0912, 4-20-0670 cons.
IN THE APPELLATE COURT

FILED
March 24, 2022
Carla Bender
4th District Appellate
Court, IL

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the
Plaintiff-Appellee,) Circuit Court of
v.) Schuyler County
JERMAINE D. CARPENTER,) No. 18CF25
Defendant-Appellant.)
) Honorable
) Kevin D. Tippey,
) Judge Presiding.

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

ORDER

- ¶ 1 *Held:* Defendant was not entitled to credit against his fine or sentence of incarceration for the time he spent in secure-management status in a facility operated by the Illinois Department of Human Services prior to sentencing by the trial court.
- ¶ 2 On October 16, 2019, a jury convicted defendant, Jermaine D. Carpenter, of three counts of aggravated battery for (1) striking employees of the Illinois Department of Human Services (DHS) while they were performing their official duties (720 ILCS 5/12-3.05(d)(4)(i) (West 2018)), (2) striking employees of DHS to prevent the employees from performing their official duties (720 ILCS 5/12-3.05(d)(4)(ii) (West 2018)), and (3) striking employees of DHS in retaliation for them performing their official duties (720 ILCS 5/12-3.05(d)(4)(iii) (West 2018)). Before sentencing, defendant filed a motion seeking credit against his sentence for the time he spent in secure-management status (essentially solitary confinement), due to the actions underlying his criminal charges, in the DHS facility where he had been civilly committed prior to his offenses.

The trial court did not give defendant such credit and sentenced him to 10 years in prison. In April 2020, defendant filed a motion in the trial court pursuant to Illinois Supreme Court Rule 472 (eff. May 17, 2019), seeking presentence credit based again on the time in secure-management status, which the court denied.

¶ 3 Defendant raises two issues. First, he asserts he should have been awarded presentence custody credit for the time he spent in secure-management status beginning with the date DHS placed him in such status or, in the alternative, from the date the State filed the charges against him. Second, defendant asserts, based on the same arguments, the trial court should have awarded him a \$5 credit against his fine for each day in presentence custody.

¶ 4 We affirm the judgment of the trial court.

¶ 5 I. BACKGROUND

¶ 6 In 2009, defendant was civilly committed to the DHS facility in Rushville for treatment and detention as a sexually violent person. On January 26, 2018, one of the Rushville facility staff known as a Security Therapy Aide (STA) told defendant he could not wear his headphones in the hallway on the way to the law library, consistent with a facility rule. This agitated defendant who began yelling at the STA. The STA told defendant to return to his room to cool down. Defendant then punched this STA several times in the face and head area, injuring the STA. Another STA came to assist, who defendant then began hitting. Several staff then subdued defendant.

¶ 7 A DHS staff member interviewed defendant immediately after the foregoing, and DHS transferred defendant to what was then known as secure-management status (SMS). SMS meant defendant was confined to his room initially for 23 hours per day, though at some point the confinement changed to 21 hours per day. SMS was provided for by the Illinois Administrative

Code. See 59 Ill. Adm. Code 299.650 (2018). This section provided that DHS could hold a resident in SMS, when the resident had been charged with a crime arising out of a rule violation, “until it is determined by the treatment team that the resident no longer presents an immediate risk of harm to self or others and be effectively managed in the Program.” *Id.* The section has since been amended, renaming SMS “special management status” and providing simply that a resident who has pending criminal charges arising out of a rule violation may be kept in an area designated as a special management area. 59 Ill. Adm. Code 299.650, amended at 44 Ill. Reg. 8246 (eff. Apr. 28, 2020). DHS kept defendant so confined until he was transferred to an Illinois Department of Corrections facility to serve his sentence after trial.

¶ 8 The State charged defendant with several counts of aggravated battery in July 2018. The trial court arraigned defendant and released him without setting bail. The court was aware defendant was housed at the Rushville DHS facility, as the court directed defendant to report to his court dates if he was released from DHS custody.

¶ 9 While awaiting trial, defendant, pursuant to DHS rules, appealed his placement in SMS and sought relief from the near solitary confinement. His attempts were unsuccessful.

¶ 10 A jury convicted defendant, and on December 23, 2019, the trial court sentenced defendant to a prison term of 10 years. Prior to sentencing, defendant filed a motion seeking presentence credit for the 696 days he spent in SMS. The court found, due to the civil commitment, defendant was not entitled to such credit as he had not been confined for criminal purposes. Defendant filed a notice of appeal the day the court sentenced him, which appeal was docketed in this court as case No. 4-19-0912.

¶ 11 In April 2020, defendant filed a motion pursuant to Illinois Supreme Court Rule 472(a)(3) (eff. May 17, 2019), seeking presentence credit based on the time in SMS. The trial court

denied the motion, and defendant sought to appeal. That appeal was docketed in this court as case No. 4-20-0670.

¶ 12 On March 30, 2021, on defendant’s motion, we consolidated the appeals.

¶ 13 II. ANALYSIS

¶ 14 A. Standard of Review

¶ 15 We review questions of statutory interpretation including presentence credit *de novo*. *People v. Jones*, 397 Ill. App. 3d 651, 654 (2009).

¶ 16 B. Defendant Is Not Entitled to Presentence Credit

¶ 17 Defendant argues he is entitled to presentence credit because he was in custody by virtue of his placement in SMS by DHS and that such custody was the result of the offense for which he was sentenced. Put another way, he asserts if we find the SMS placement was custodial, we may award him presentence credit pursuant to section 5-4.5-100(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-100(b) (West 2018)).

¶ 18 Defendant proffers multiple authorities in support of his argument. He notes the above-referenced section provides for presentence credit for those on home detention during bond and permits the trial court to award such credit for psychiatric or substance use treatment purposes if the treatment is custodial. Defendant, in addition, cites decisions approving credit for institutional confinement, including for substance abuse treatment, and one awarding credit for serving time on mandatory supervised release.

¶ 19 But in short, the authorities defendant relies upon are distinguishable as criminal cases, other than the provision from the Illinois Criminal Code, but defendant was civilly committed pursuant to the Sexually Violent Persons Commitment Act (Act). 725 ILCS 207/40(a) (West 2018). The Act provides for commitment “for control, care and treatment until such time as

the person is no longer a sexually violent person.” *Id.* Without delving deep into the Act, we note it provides, among other things, that such commitments are accomplished through an orderly trial process, supported by expert evidence, and can result in institutional confinement or conditional release. 725 ILCS 207/40 (West 2018). The process is specifically “civil in nature.” 725 ILCS 207/20 (West 2018).

¶ 20 Our supreme court has considered the Act and found commitment pursuant to its provisions for as long as a person continues to be mentally ill and dangerous does not violate the United States Constitution. *In re Detention of Stanbridge*, 2012 IL 112337, ¶¶ 84-85. Additionally, a similar civil commitment scheme has withstood various constitutional challenges before the United States Supreme Court. See *Kansas v. Hendricks*, 521 U.S. 346, 371 (1997). The gist of defendant’s argument therein was that the Kansas civil-commitment process for sexually violent persons established criminal proceedings, and such that confinement under the scheme constituted punishment. *Id.* at 361. In the course of upholding the Kansas process, the court noted it has “consistently upheld such involuntary commitment statutes provided the confinement takes place pursuant to proper procedures and evidentiary standards.” *Id.* at 357. The Court explained there is not an absolute right to be entirely free from restraint and states, under certain circumstances, can provide for involuntary commitment of those who cannot control their behavior and thereby are a threat to the health and safety of the public. *Id.* The court held the Kansas statutory scheme complied with requirements of due process, did not violate double jeopardy principles, and was not an illegal *ex post facto* law. *Id.* at 371.

¶ 21 Defendant does not pursue a constitutional challenge, so we do not explore that issue extensively but rather have done so to demonstrate the recognized dichotomy between criminal and civil commitment, as well as the approval of the latter. Defendant complains of the

solitary confinement nature of SMS, but there is merely a qualitative difference between SMS and his general confinement in a DHS facility. But no matter the nature of the civil confinement, defendant was simply not confined within the meaning of the Illinois Criminal Code of 2012. Notably, the Code does not address presentence credit for civil commitment in DHS, but it does address credit for various types of criminal confinement. Because defendant was confined at the Rushville DHS facility, and placed in SMS, pursuant to a civil commitment in accordance with the Act and not for a criminal offense, he is not entitled to presentence credit.

¶ 22 Defendant also seeks presentence custody credit of \$5 per day to reduce his fine. For the same reasons, he is not entitled to such credit.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the trial court's judgment.

¶ 25 Affirmed.