Illinois Official Reports

Appellate Court

People v. Joyner, 2022 IL App (2d) 210045

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BONZELL L. JOYNER, Defendant-Appellant.
District & No.	Second District No. 2-21-0045
Filed	June 9, 2022
Decision Under Review	Appeal from the Circuit Court of Kane County, No. 94-CF-2009; the Hon. Donald M. Tegeler Jr., Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	James E. Chadd and Thomas A. Lilien, of State Appellate Defender's Office, of Elgin, for appellant. Jamie L. Mosser, State's Attorney, of St. Charles (Patrick Delfino, Edward R. Psenicka, and Victoria E. Jozef, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

Panel JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Justices Zenoff* and Brennan concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Bonzell L. Joyner, appeals from an order of the circuit court of Kane County that corrected the amount of his presentence-custody credit from 3002 to 1502 days. He contends that the State lacked the authority to seek such a correction. Because Illinois Supreme Court Rule 472 (eff. May 17, 2019) authorized the correction of the amount of presentence-custody credit, we affirm.

¶ 2 I. BACKGROUND

¶ 3 Following a jury trial, defendant was found guilty of first degree murder (720 ILCS 5/9-1(a) (West 1994)) and sentenced to natural life imprisonment. Although the trial court never mentioned presentence-custody credit when imposing the sentence, the December 8, 1998, written judgment and the mittimus both stated that defendant was entitled to 3002 days of credit for presentence custody.

¶ 4 On direct appeal, defendant challenged his conviction and contended that the trial court erred in imposing a life sentence. See *People v. Joyner*, 317 Ill. App. 3d 93, 95 (2000). This court affirmed defendant's conviction but modified his sentence to 60 years in prison. *Joyner*, 317 Ill. App. 3d at 111. No issue regarding presentence-custody credit was raised.

¶ 5 In June 2004, defendant filed a *pro se* postconviction petition (725 ILCS 5/122-1 *et seq.* (West 2004)), claiming that (1) he was denied a fair trial and (2) appellate counsel on direct appeal was ineffective. *People v. Joyner*, No. 2-04-1283 (2006) (unpublished summary order under Illinois Supreme Court Rule 23(c)). The trial court dismissed the petition as frivolous and patently without merit and appointed appellate counsel. No issue regarding presentence-custody credit was raised. We granted appellate counsel's motion to withdraw and affirmed.

¶ 6 In July 2015, defendant filed a petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)), alleging that the Illinois Department of Corrections (DOC) had improperly added a term of mandatory supervised release (MSR) to his sentence. *People v. Joyner*, No. 2-16-0777 (2018) (unpublished summary order under Illinois Supreme Court Rule 23(c)). The trial court denied the petition. No issue regarding presentence-custody credit was raised. The trial court appointed appellate counsel. Later, we granted appellate counsel's motion to withdraw and affirmed.

¶ 7 On April 16, 2015, a DOC employee at defendant's institution sent a letter to the trial judge who sentenced defendant, the Kane County state's attorney, and the Kane County circuit clerk. The letter asked for clarification regarding the mittimus, which stated that defendant was entitled to 3002 days of presentence-custody credit. The letter noted that 3002 days of

*Justice Zenoff participated in this appeal but has since been assigned to the Fourth District Appellate Court. Our supreme court has held that the departure of a judge prior to the filing date will not affect the validity of a decision so long as the remaining two judges concur. *Proctor v. Upjohn Co.*, 175 Ill. 2d 394, 396 (1997).

presentence-custody credit would mean that defendant's time in custody commenced over four years before he committed the offense. The letter asked that the matter be reviewed and that any amended mittimus be sent to the DOC.

¶ 8 On December 9, 2015, the matter came up for hearing. The trial court asked the State if it was aware of the DOC letter regarding presentence-custody credit. The prosecutor stated that he was unaware of the inquiry. The court then appointed counsel to investigate the matter for defendant.

¶ 9 On April 4, 2016, the State filed a motion to amend the mittimus, asserting that defendant's presentence-custody credit was 1502 days,[1] calculated from the date of arrest (October 27, 1994) to the date of sentencing (December 8, 1998). The trial court declared that, "given the numbers and given the facts, [it was] going to construe [the State's motion] as [one for] correction of a scrivener's error." Thus, the court granted the motion to correct the mittimus to reflect presentence-custody credit of 1502 days.

¶ 10 Defendant appealed, contending that (1) the trial court lacked jurisdiction to modify the judgment and (2) the modification amounted to an unlawful increase in his sentence. *People v. Joyner*, No. 2-17-0333 (2019) (unpublished summary order under Illinois Supreme Court Rule 23(c)). We agreed with defendant that the State had not sought to correct a clerical error but, rather, sought to modify the judgment. We explained that, because the trial court did not mention presentence-custody credit in its remarks when imposing the life sentence, we could not regard the State's motion as an attempt to conform the written judgment to an oral pronouncement. Because the written judgment was the *only* judgment, the State was necessarily seeking to modify the judgment itself rather than simply correct a clerical error in the written judgment. We noted that the trial court no longer had jurisdiction to modify the judgment.

¶ 11 We further observed that, after the State filed its motion, our supreme court adopted Illinois Supreme Court Rule 472 (eff. Mar. 1, 2019), which gives the circuit court continuing jurisdiction to correct certain sentencing errors, including errors in the calculation of presentence-custody credit. Although we suggested that Rule 472 might apply prospectively only (*Joyner*, No. 2-17-0333 (citing *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 187 (2011)), we "express[ed] no opinion on the State's ability to pursue its claim under Rule 472." We held that, because the trial court lacked jurisdiction, we did also. Accordingly, we vacated the trial court's judgment granting the motion to correct the mittimus, and we dismissed the appeal. Our mandate issued on November 26, 2019.

¶ 12 On January 31, 2020, the State filed a motion per Rule 472 to correct defendant's sentence to reflect 1502 days of presentence-custody credit. However, a hearing on the State's motion was delayed because court activity was restricted due to the COVID-19 pandemic.

¶ 13 On July 22, 2020, based in part on the presentence-custody credit of 3002 days, the DOC released defendant to begin serving his MSR. On August 6, 2020, the State filed an emergency motion for an expedited hearing on its Rule 472 motion.

¶ 14 On August 12, 2020, the trial court conducted a hearing on the State's Rule 472 motion. The State noted that, in his response to the motion, defendant did not argue that he was legally entitled to 3002 days of credit; rather, his "argument [was] more of an equitable one, that [he]

[1]The State changed its initial calculation of 1501 days to 1502 days upon learning that there was a leap year during defendant's time in presentence custody.

relied on this sentence for 17 and a half years." Defendant responded that (1) Rule 472 did not confer jurisdiction to consider the State's motion, (2) the State had waived the issue by not raising it earlier, and (3) the State was "trying to give [defendant] more time than what he was sentenced to," where he had "served the sentence that he was given."

¶ 15 The prosecutor stated on the record that she had spoken to DOC counsel several times about why the DOC had released defendant when it did. Counsel told the prosecutor that defendant was released not because of some special consideration, such as executive clemency, but because the DOC believed that defendant had 3002 days of presentence-custody credit.

¶ 16 In its ruling, the trial court found, as an initial matter, that it had jurisdiction under Rule 472. The court further found that the "issue of credit for time served [had] never, ever been litigated before any court of competent jurisdiction." First, "at no time was credit for time served ever litigated before [the sentencing judge]." The point was "never litigated or discussed on the record" but "[s]omehow the 3,002 got there." Second, the point "was never litigated at the Appellate Court," and "it was never sent back to the trial court for a new sentencing hearing."

¶ 17 As for the correct amount of presentence-custody credit, the trial court agreed with the State that 1502 days "seem[ed] to be the correct amount of time, if you look at the days of when [defendant] was taken into custody and when he was sentenced." "[T]he 3,002 days *** was erroneous and violated the law." The court added that defendant "seem[ed] to somewhat concede the issue that he was given double credit." The court later remarked that it "[had] not heard that 1502 days is in dispute." The court further commented that, though this court reduced defendant's life sentence to 60 years, the sentencing court's "second judgment order *** did not contain any credit for time served." The court said, "[T]herefore, quite frankly, [defendant] should have been in here asking for his 1,502 days, which I am going to give him because I find today that that is the appropriate [number]."

¶ 18 Thus, the trial court granted the State's motion and issued an amended mittimus reflecting presentence-custody credit of 1502 days. The court remanded defendant to the DOC to serve out the remainder of his prison sentence, subject to the 1502 days of credit. Following the denial of his motion to reconsider, defendant filed this timely appeal.

¶ 19 II. ANALYSIS

¶ 20 We begin by noting that defendant has not contended in the trial court or on appeal that he is owed 3002 days of presentence-custody credit rather than the 1502 days calculated by the State and the trial court. Although defendant suggested in the trial court that he might have been eligible for additional credit for time spent in custody on another charge (see 730 ILCS 5/5-4.5-100(c) (West 2020)), he never pressed that argument or offered any evidence to support it. Of significance, at the hearing on the State's Rule 472 motion, the trial court commented that (1) defendant appeared to concede that the 3002 days awarded in the written judgment and the mittimus was erroneous and (2) there appeared to be no dispute that 1502 days was the proper amount of presentence-custody credit. Defendant challenged neither statement.

¶ 21 Rather than assert that he was entitled to 3002 days of credit, defendant contends that the State (1) forfeited any claim that the judgment included an incorrect amount of presentence-custody credit, (2) is barred by the doctrine of *laches* from seeking to correct the judgment, and (3) is improperly seeking to have the sentence increased by seeking to correct the amount of presentence-custody credit.

¶ 22 We first address the issue of forfeiture. The forfeiture doctrine serves the salutary purpose of prompting the parties to timely articulate arguments. *People v. Wells*, 182 Ill. 2d 471, 490 (1998). An argument that could have been timely made, but was not, is forfeited. *Wells*, 182 Ill. 2d at 490.

¶ 23 Here, although the error in the amount of presentence-custody credit existed when the trial court sentenced defendant on December 8, 1998, the State had no reason then to challenge the credit because defendant's life sentence made him ineligible for presentence-custody credit. Such credit became relevant only after this court, in 2000, reduced defendant's life sentence to 60 years' imprisonment. But even then, the State was unaware that the 3002 days of credit was erroneous. The State did not become aware until December 2015, when the trial court advised the State that the DOC had inquired about the amount of credit. Once it was notified of the error, the State promptly filed a motion to amend the mittimus and correct the amount of credit. On appeal, we held that the trial court lacked jurisdiction to rule on the State's motion. However, for purposes of a forfeiture analysis, the State clearly attempted to raise the issue once it learned of it. Of course, after Rule 472 became effective, the State promptly sought relief under that rule. Under the circumstances, we cannot say that the State forfeited the issue by failing to raise it earlier.

¶ 24 Nor does the *laches* doctrine preclude the State from seeking to correct the presentence-custody credit. This equitable defense bars claims by those who neglect their rights to the detriment of others. *Wells*, 182 Ill. 2d at 490. Application of the *laches* doctrine requires a showing of (1) a lack of due diligence and (2) prejudice to the party asserting the doctrine. *Wells*, 182 Ill. 2d at 490.

¶ 25 Here, we initially note that the State asserts that defendant forfeited his reliance on *laches* by not raising it in the trial court. We disagree. At the hearing on the State's Rule 472 motion, the State remarked that defendant's argument against correcting the credit was less of a legal argument than an equitable one based on his having relied on the awarded credit for over 17 years. The State's comment shows that it understood that defendant relied, at least in part, on an argument similar to *laches*. Thus, we hold that defendant did not forfeit *laches* by not raising it below. Further, forfeiture is a limit on the parties and not the court, and we will address an otherwise forfeited issue to obtain a just result. *People v. Holmes*, 2016 IL App (1st) 132357, ¶ 65.

¶ 26 Defendant's reliance on *laches*, however, lacks merit. As stated, *laches* is designed to bar claims only by those who have neglected their rights to the detriment of others. See *Wells*, 182 Ill. 2d at 490. Here, defendant did not suffer detriment from any delay by the State. On the contrary, defendant benefited from any delay, as he remained eligible for an earlier release than that to which he was entitled. Nor was defendant prejudiced in his ability to assert that the State was not entitled to seek correction of presentence-custody credit or to claim that defendant was entitled to 3002 days of credit. Because defendant has not established the prejudice element of the *laches* defense, we need not decide whether the State acted with due diligence. Thus, the State was not barred by *laches* from seeking correction of the judgment.

¶ 27 We next decide whether Rule 472 provided a proper basis for the State to seek a reduction in the days of presentence-custody credit.[2] It did.

---

[2]Defendant comments that, "because [Rule 472] was adopted on February 26, 2019, but did not take effect until March 1, there is a question whether the Rule should be applied prospectively only."

¶ 28 Rule 472 provides that the circuit court retains jurisdiction in criminal cases to correct certain errors—including errors in the calculation of presentence-custody credit—"at any time following judgment and after notice to the parties, including during the pendency of an appeal, on the court's own motion, or on motion of any party." Ill. S. Ct. R. 472(a)(3) (eff. May 17, 2019). Thus, the plain language of Rule 472 authorizes the State to seek correction of the presentence-custody credit stated in the written judgment and mittimus. Defendant does not contend otherwise.

¶ 29 However, defendant asserts that Rule 472 cannot be applied to override established law prohibiting an increase in a previously imposed sentence.[3] As the State correctly recognizes, a court cannot increase a sentence once it is imposed. See 730 ILCS 5/5-4.5-50(d) (West 2020) ("The court may not increase a sentence once it is imposed."). The parties do not cite, nor do we find, any cases addressing whether a reduction in presentence-custody credit under Rule 472 effectively increases a defendant's sentence. Nonetheless, we conclude that it does not.

¶ 30 On direct appeal, we reduced defendant's sentence to 60 years in prison. Defendant was obligated to serve the 60-year prison sentence. Of course, the time defendant spent in prison was potentially affected by the credit he received for his presentence custody. However, the 60-year prison sentence remained unaffected by the credit to which defendant was entitled. Put another way, a decrease in the days of credit would increase the time defendant spent in prison but would not increase the term of his sentence. Thus, a reduction in presentence-custody credit under Rule 472 does not increase a defendant's sentence and so does not contravene the bar against increasing a sentence once imposed.

¶ 31 Defendant's reliance on *People v. Hills*, 78 Ill. 2d 500 (1980), is misplaced. In *Hills*, the trial court, after revoking probation, imposed a prison sentence but did not indicate whether the defendant should receive credit for the time he spent on probation. *Hills*, 78 Ill. 2d at 505. Several days later, the court clarified the record and ordered that the defendant not receive credit for time spent on probation. *Hills*, 78 Ill. 2d at 505. However, when the defendant was originally sentenced, the sentencing statute provided that time served on probation was to be credited against a prison sentence unless the court ordered otherwise. *Hills*, 78 Ill. 2d at 507 (citing Ill. Rev. Stat. 1977, ch. 38, ¶ 1005-6-4(h)). Under this provision, the court's silence on credit for time on probation implied that the defendant was entitled to such credit. Consequently, the court's subsequent ruling that the defendant was not entitled to such credit unlawfully increased his sentence. *Hills*, 78 Ill. 2d at 507-08.

Defendant notes that *People v. Barr*, 2019 IL App (1st) 163035, *withdrawn*, held that Rule 472 has only prospective effect. However, defendant also recognizes that *Barr* was vacated after Rule 472 was amended in May 2019. Defendant then comments that there is no need to decide whether the rule applies only prospectively because defendant's other arguments will prevail. Thus, defendant has forfeited any argument that Rule 472 does not apply retroactively here.

[3]Although the State asserts that defendant forfeited this claim because he did not raise it in the trial court, the record shows that, during the hearing on the State's Rule 472 motion, defendant argued that the State was trying to "give [defendant] more time than what he was sentenced to." Thus, defendant did contend that the State was seeking an unlawful increase in defendant's sentence. Defendant preserved the issue.

¶ 32 This case is distinguishable from *Hills* because, here, the trial court did not remove any credit to which defendant was entitled. Rather, the court corrected the credit to the amount to which defendant was entitled. Thus, *Hills* does not support defendant's position.

¶ 33 Finally, we emphasize that there is no doubt that defendant was entitled to no more than 1502 days' credit for presentence custody and that the sentencing order awarded him 3002 days' credit in error. By its plain language, Rule 472 was designed to permit the State or the defendant to seek a correction of presentence-custody credit. The rule states that "any party" may claim an error in the calculation of such credit. Ill. S. Ct. R. 472(a) (eff. May 17, 2019). The rule thus allows upward or downward adjustments to presentence-custody credit as are necessary to conform the sentence to the law.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 36 Affirmed.