

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Wyatt W. Hunt,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 15, 2021

Court of Appeals Case No.
21A-CR-1216

Appeal from the Montgomery
Superior Court

The Honorable Heather L. Barajas,
Judge

Trial Court Cause No.
54D01-1904-F5-1085

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Wyatt W. Hunt (Hunt), appeals the trial court's award of pre-sentence credit time.
- [2] We affirm.

ISSUES

- [3] Hunt presents this court with one issue on appeal, which we restate as the following two issues:
- (1) Whether the trial court erred when it declined to award Hunt pre-sentence credit time for the time spent awaiting extradition; and
- (2) Whether the trial court abused its discretion when it failed to rule on his petitions, which he had filed *pro se*.

FACTS AND PROCEDURAL HISTORY

- [4] On April 30, 2019, the State filed an Information, charging Hunt with Level 5 felony resisting law enforcement resulting in serious bodily harm, Level 5 felony criminal confinement, Level 6 felony resisting law enforcement, and Class A misdemeanor reckless driving. On May 20, 2019, Hunt posted a surety bond and was released from jail. On November 19, 2019, Hunt failed to appear for a status hearing and a warrant was issued for his arrest.
- [5] On December 16, 2019, Hunt was arrested in Linn County, Iowa. Once in custody, Hunt signed a waiver of extradition for outstanding warrants in both

Illinois and Indiana. Hunt remained in custody in Iowa from December 16, 2019 until February 7, 2020, at which point Illinois served its outstanding warrant on Hunt and assumed custody. Hunt remained in custody in Illinois until June 29, 2020, when he pleaded guilty to the Illinois charge of Class 3 felony use of a forged credit card. He was sentenced to twenty-four months in jail and was given credit for 144 days, which included credit time from February 7, 2020 until June 29, 2020. Two days later, Hunt was transported to Indiana, after he was served with the Indiana warrant which had been issued for his arrest on November 19, 2019.

[6] On June 16, 2021, after entering into a plea agreement with the State, Hunt appeared for a sentencing hearing. During the sentencing hearing, Hunt requested to be awarded pre-sentence credit time for the time spent in custody in Iowa and Illinois. Hunt indicated that he had received a transcript from the criminal court proceeding in Iowa, where Hunt was “told by that judge that some time there would count towards” his Indiana sentence. (Transcript p. 52). The transcript—which later appeared to be from Rock Island, Illinois—was not shown to the trial court nor was it admitted into evidence. Although defense counsel explained that Hunt was held in Iowa prior to being extradited to Indiana, and if that was the case, then Hunt might be eligible for additional credit time, defense counsel also advised the trial court that he did not have documentation to establish whether Hunt was being held in Iowa on an unrelated charge, an unrelated sentence, or solely for extradition. In response, the trial court told Hunt that it was not awarding him additional pre-sentence

credit time without being shown evidence that Hunt spent the time in custody in Iowa “only on our time.” (Tr. p. 55). The trial court further advised Hunt that his sentence from Illinois must be served consecutively by operation of law, and that, to the extent the court had discretion to run Hunt’s sentences concurrently, it would not be inclined to do so. The trial court sentenced Hunt to four years executed in the Department of Correction. He received 350 actual days of credit for the time he served from May 14, 2019 until May 17, 2019, and from July 1, 2020 until June 15, 2021, as well as 120 days of good time credit days, resulting in an aggregate 470 days of pre-sentence credit.

[7] Hunt filed his notice of appeal on June 17, 2021. On June 25, 2021, Hunt filed a *pro se* motion to terminate his representation by counsel. The trial court did not rule on Hunt’s motion. On June 28, 2021, Hunt filed a *pro se* petition for additional pre-sentence credit time, claiming that he had signed a waiver of extradition in Iowa and that he was being held on outstanding warrants for both Illinois and Indiana. He requested 155 days of additional credit time to be applied to his Indiana sentence for time he spent in Illinois because his sentence in Illinois “did not indicate that [his] sentence was to be served consecutively to [his] sentence in Indiana.” (Appellant’s App. Vol. II, p. 57). The trial court did not rule on Hunt’s motion.

[8] Hunt now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

I. Pre-Sentence Credit Time

[9] Hunt contends that he is entitled to additional pre-sentence credit time for the time he spent awaiting extradition in Iowa and Illinois. “Pre-sentence jail time credit is a matter of statutory right, not a matter of judicial discretion.” *Weaver v. State*, 725 N.E.2d 945, 948 (Ind. Ct. App. 2000). Because pre-sentence jail time credit is a matter of statutory right, trial courts “do not have discretion in awarding or denying such credit.” *Molden v. State*, 750 N.E.2d 448, 449 (Ind. Ct. App. 2001). However, “those sentencing decisions not mandated by statute are within the discretion of the trial court and will be reversed only upon an abuse of that discretion.” *Id.* On appeal, it is the defendant’s burden to show that the trial court erred in calculating his credit time. *Gardner v. State*, 678 N.E.2d 398, 401 (Ind. Ct. App. 1997).

[10] Indiana Code section 35-50-6-3 provides that a person earns one day of good time credit for each day the person is imprisoned for a crime or confined awaiting trial or sentencing. We have held that, in enacting the statute, “the Legislature clearly intended the credit to apply only to the sentence for the offense for which the presentence time was served” and that any other result would be untenable because it would permit a defendant to receive credit time for “time served on wholly unrelated offenses.” *Maciaszek v. State*, 75 N.E.3d 1089, 1093 (Ind. Ct. App. 2017), *trans. denied*. Thus, the phrase “confined awaiting trial or sentencing” means “confined as a result of the charge for which the defendant is being sentenced.” *Diedrich v. State*, 744 N.E.2d 1004, 1005 (Ind. Ct. App. 2001).

A. Custody in Iowa

[11] Hunt contends that he should be awarded an extra forty-seven days of credit for the time he spent in Iowa from December 10, 2019 until February 1, 2020 because he claims that he spent that time awaiting extradition to Indiana. We have previously addressed and rejected a similar request for pre-sentence credit time in *Maciaszek*. While Maciaszek served an unrelated sentence for a Florida conviction, Maciaszek was charged with criminal offenses in Indiana, and Indiana authorities placed a hold on Maciaszek. *Masciaszek*, 75 N.E.3d at 1091. At the time, Maciaszek was also under a hold for alleged crimes committed in New Hampshire and Maine. *Id.* Upon completion of his Florida sentence, Maciaszek was transported to New Hampshire, where he was convicted and sentenced for crimes committed there. *Id.* During his incarceration in New Hampshire, Maciaszek sought disposition of his Indiana charges and, at his request, was transported to Indiana, where he pleaded guilty and was sentenced “with no credit for time served prior to sentencing.” *Id.* Maciaszek was returned to New Hampshire, subject to an order to be transported back to Indiana after he served his New Hampshire sentence. *Id.* Maciaszek subsequently petitioned unsuccessfully for additional jail time credit in Indiana for the period between the enactment of Indiana’s hold and the imposition of his Indiana sentence. *Id.* On appeal, we affirmed the trial court’s denial of additional jail time credit as to Maciaszek’s “request for presentence credit for actual time served or good time credit based on the time he spent incarcerated in Florida and New Hampshire prior to his extradition to Indiana[.]” *Id.* at 1095. As we reasoned:

Although [I.C. §] 35-50-6-3 states a defendant is allowed credit for time “confined awaiting trial or sentencing,” we conclude the Legislature clearly intended the credit to apply only to the sentence for the offense for which the presentence time was served. Any other result would allow credit time for time served on wholly unrelated offenses. Under the criminal justice system, once convicted, the defendant must serve the sentence imposed for the offense committed. Credit time allowed by legislative grace toward a specific sentence clearly must be for time served for the offense for which that specific sentence was imposed.

[12] *Id.* at 1093. Thus, we found that because Maciaszek’s Indiana charges were unrelated to his Florida and New Hampshire convictions, the trial court did not err when it refused to award Indiana credit time to Maciaszek for the time he served in Florida and New Hampshire on unrelated charges. *Id.*

[13] Likewise here, we cannot say that the trial court erred when it declined to award Hunt the additional pre-sentence credit time for time spent in custody in Iowa. Hunt presented no evidence establishing the reason for his incarceration in Iowa or any documentation that Hunt spent forty-seven days in Iowa solely awaiting extradition to Indiana. The only evidence submitted to challenge the accuracy of his credit time consists of a letter of the Iowa Linn County Clerk informing Hunt that he would need to pay a fee if he wanted a transcript of the waiver of extradition hearing that took place on December 6, 2019, the chronological case summary from Rock Island, Illinois, and a transcript from the Illinois court in which the trial court informed Hunt that it would be in his best interest to sign a waiver of extradition to Indiana. Hunt failed to provide any evidence from the Linn County correctional center which might have

established the number of days Hunt spent in pretrial confinement and the State for which he was held. The submitted evidence merely supports that Hunt was held in Iowa until he was extradited to Illinois to answer for charges stemming from Illinois for the use of a forged credit card. Hunt was held solely on Indiana charges only after he was sentenced in Illinois on June 29, 2020. Accordingly, the trial court did not err in denying Hunt additional credit time for the time he was held in Iowa.

B. *Custody in Illinois*

[14] Hunt also contends that he should be awarded additional pre-sentence credit time for the time spent in Illinois while serving his sentence for the Illinois conviction for the use of a forged credit card from February 7, 2020 until June 29, 2020. In support of his argument, Hunt relies on *Ramirez v. State*, 455 N.E.2d 609 (Ind. Ct. App. 1983). In that case, Ramirez was incarcerated in Michigan when he was transported to Indiana where he was convicted on Indiana charges and sentenced accordingly. *Id.* at 611-12. Afterwards, Ramirez petitioned the trial court for credit time against his Indiana sentence for the time he was incarcerated in Michigan prior to his sentence, as well as the time he was in jail in Indiana awaiting trial. *Id.* The trial court denied the request. *Id.* On appeal, we held that Ramirez was entitled to additional time because there was “no indication” the sentences imposed in Michigan and Indiana were to be served consecutively as opposed to concurrently. *Id.* at 617. Without any indication to the contrary, we were compelled to find that Ramirez’s sentences were to be served concurrently, and thus, he was entitled

to the additional pre-sentence credit time as both his Michigan and Indiana cases were considered one “aggregate sentence.” *Id.*

[15] We cannot reach the same result here. Indiana Code section 35-50-1-2 provides that if, after being arrested for one crime, “a person commits another crime . . . while the person is released . . . upon the person’s own recognizance . . . or on bond . . . the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried, and sentences imposed.” At the time he committed the Indiana offenses, Hunt was out on bond in his Illinois case. Furthermore, at the time of the sentencing hearing in Indiana, the trial court explicitly advised Hunt that his sentences from Illinois and Indiana “must run consecutively” by operation of law, and that, even if he had the discretion to run the sentences concurrently, he would not be inclined to do so. (Tr. p. 52). Thus, unlike *Ramirez*, where the trial court failed to indicate whether the sentences would run concurrently or consecutively, here, the trial court properly concluded that Hunt’s sentences from Illinois and Indiana must run consecutively and therefore Hunt is not entitled to receive additional pre-sentence credit time.

II. *Hunt’s Petitions*

[16] Hunt contends that the trial court abused its discretion when it failed to rule on his petition for jail time and additional good time credit, which he had filed *pro se* on June 28, 2021. Although Hunt had filed another *pro se* request to have the representation by his defense counsel terminated three days prior to his *pro se*

petition for additional good credit time, the trial court had not ruled on the request for termination of his representation and thus Hunt was still represented at the time of the petition. If a defendant is represented by counsel, the defendant speaks to the trial court through that counsel. *Hill v. State*, 773 N.E.2d 336, 342 (Ind. Ct. App. 2002). A trial court is not required to respond to a represented defendant's *pro se* objections or motions because "[t]o require the trial court to respond to both defendant and counsel would effectively create a hybrid representation to which defendant is not entitled." *Underwood v. State*, 722 N.E.2d 828, 831 (Ind. 2000); *see also* Ind. Trial Rule 11 ("Every ... motion of a party represented by an attorney shall be signed by at least one (1) attorney of record[.]"). Nonetheless, the trial court's silence with respect to Hunt's *pro se* petition should not have come as a surprise to him. During previous status hearing in the current proceedings, Hunt had been warned several times that the trial court was "going to ignore" any motions or petitions he filed *pro se* while represented by counsel. (Tr. p. 25). Accordingly, as Hunt was represented by counsel, the trial court was not required to rule on Hunt's *pro se* petition.

CONCLUSION

- [17] Based on the foregoing, we hold that the trial court properly declined to award Hunt pre-sentence credit time for the time he spent awaiting extradition, and the trial court did not abuse its discretion when it failed to rule on Hunt's *pro se* petitions, which he had filed while represented by counsel.

[18] Affirmed.

[19] Robb, J. and Molter, J. concur