

**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).

2019 IL App (4th) 190070-U  
NOS. 4-19-0070, 4-19-0071, 4-19-0072 cons.

**FILED**  
June 20, 2019  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

**IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT**

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
NIKALOS M. BENNETT,	)	Nos. 15CF141
Defendant-Appellant.	)	16CF292
	)	16CF378
	)	
	)	Honorable
	)	Robert K. Adrian,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The appellate court affirmed, finding the trial court did not err in denying defendant’s postconviction petition for additional sentencing credit.

¶ 2 In March 2015, the State charged defendant, Nikalos M. Bennett, by information with two counts of forgery. In May and June 2016, defendant was charged with additional counts of forgery for separate crimes from those he was charged with in March 2015. In July 2016, the trial court held a bond hearing and, in an order, released defendant on bond to an inpatient substance-abuse-treatment facility. In August 2016, the court continued the bond to an outpatient treatment program following defendant’s successful discharge from the inpatient facility. In June 2017, defendant pleaded guilty to multiple counts of forgery and was sentenced to a total of 6 years’ imprisonment, with the court granting 52 days of sentencing credit.

¶ 3 On appeal, defendant argues he is entitled to sentencing credit for his time spent in substance-abuse treatment. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2015, defendant was charged by information with two counts of forgery (720 ILCS 5/17-3(a)(1), (2) (West 2014)), alleging, in November 2014, defendant, with the intent to defraud, prepared a document purporting to be a check made and endorsed by Elizabeth White and knowingly delivered it to First Bankers Trust. In May 2016, the State charged defendant by information with 10 counts of forgery (720 ILCS 5/17-3(a)(1), (2) (West 2014)), alleging, between March and April 2016, defendant, with the intent to defraud, prepared five documents purporting to be checks made and endorsed by Jennifer Sherwood to be drawn from United Community Credit Union. In June 2016, the State charged defendant with a single count of forgery (720 ILCS 5/17-3(a)(2) (West 2014)), alleging, in June 2016, defendant or one for whose conduct he was legally responsible, with the intent to defraud, knowingly delivered a document purportedly from Hannibal Regional Medical Group stating he had been a patient, despite the fact that he had never been a patient there.

¶ 6 On July 6, 2016, defendant filed a motion for a reduction in bond, which the trial court denied. On July 26, 2016, in a modified order, the court modified the bond “to allow def[endant] to attend in-patient treatment.” Defendant was required to post an “additional \$500 prior to being released.” He was ordered to not leave treatment early or he would immediately return to the Adams County jail. On August 19, 2016, the court issued an order allowing the bond to continue with outpatient treatment due to defendant’s successful discharge from inpatient treatment.

¶ 7 In April 2017, defendant waived his right to a jury and pleaded guilty to one count of forgery for each of the three cases. Defendant was sentenced to two years on each count, to be served consecutively. The court awarded him 52 days of presentence credit for time spent in custody from May 12 to May 15, 2016, and June 10 to July 27, 2016.

¶ 8 In November 2018, defendant filed a *pro se* motion for presentence credit for 376 days, the time spent in inpatient and outpatient substance-abuse treatment. In December 2018, the trial court held a hearing on the motion, where defendant was not present. The State objected to the motion, and the court denied it. The court stated defendant “was actually on bond when he went to treatment.”

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues he is entitled to a hearing by the trial court to determine whether defendant was in custody during his substance-abuse treatment and is entitled to more presentence credit. The State contends defendant waived this issue due to affirmative acquiescence by defense counsel.

¶ 12 A. Waiver

¶ 13 “[A]n error in computing credit is not waived by the failure of the defendant to call the error to the trial court’s attention.” *People v. Curtis*, 233 Ill. App. 3d 416, 419, 599 N.E.2d 101, 103 (1992). “A defendant may request sentencing credit at any time *unless* he agreed to forego it as part of a plea or other sentencing agreement.” (Emphasis in original.) *People v. Evans*, 391 Ill. App. 3d 470, 473, 907 N.E.2d 935, 937 (2009). “Because sentence credit for time served is mandatory, such a claim of error cannot be waived \*\*\*.” *People v. Anderson*, 2012 IL App (1st) 103288, ¶ 35, 977 N.E.2d 222.

¶ 14 Nothing in the record indicates defendant agreed to forfeit this argument as part of his plea. Likewise, we do not see an issue of affirmative acquiescence since the trial court did not ask about the accuracy of the presentence report or the sentence credit defendant was due. Thus, the issue is not waived.

¶ 15 B. Sentence Credit

¶ 16 Section 5-4.5-100(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-100(b) (West 2016)) states:

“[T]he offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for the number of days spent in custody as a result of the offense for which the sentence was imposed. \*\*\* The trial court may give credit to the defendant for the number of days spent confined for psychiatric or substance abuse treatment prior to judgment, if the court finds that the detention or confinement was custodial.”

¶ 17 The term custody as used in the statute “ ‘does not include the period of time during which the defendant was released on bail but is predicated upon his confinement.’ ” *People v. Ramos*, 138 Ill. 2d 152, 158, 561 N.E.2d 643, 646 (1990) (quoting *People ex rel. Morrison v. Sielaff*, 58 Ill. 2d 91, 94, 316 N.E.2d 769, 771 (1974)). Custody for these purposes is defined as “ ‘the legal duty to submit’ to legal authority not actual physical confinement.” *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 39, 976 N.E.2d 1109 (quoting *People v. Beachem*, 229 Ill. 2d 237, 252, 890 N.E.2d 515, 524 (2008)). A trial court’s determination of presentence credit is reviewed under the abuse of discretion standard. See *People v. Gonzales*, 314 Ill. App. 3d 993, 999, 734 N.E.2d 77, 82 (2000).

¶ 18 Here, the trial court released defendant and required him to go to inpatient treatment as a condition of his bond. The documents submitted by defendant, which appear to be pages from his presentence investigation report, reveal his bond was modified on July 26, 2016, to allow him to attend inpatient treatment and subsequently modified on August 19, 2016, to allow defendant to continue with outpatient treatment. Otherwise, from all other indications of the record, after inpatient treatment, defendant was either free on bond or briefly incarcerated to serve a sentence on an unrelated misdemeanor or traffic case. The July 26 bond slip indicates that upon posting an additional \$500, defendant was released to attend inpatient treatment. Absent evidence other outstanding bond amounts were modified, it is difficult to envision how a court could release a defendant conditionally on one bond, while other amounts remained unposted.

¶ 19 The trial court found defendant was free on bond at the time he was released to attend inpatient substance abuse treatment. That, however, did not end the inquiry. Under the relevant language of section 5-4.5-100(b), “[t]he trial court *may* give credit to the defendant for the number of days spent confined for psychiatric or substance abuse treatment prior to judgment, if the court finds that the \*\*\* confinement was custodial.” (Emphasis added.) 730 ILCS 5/5-4.5-100(b) (West 2016). Here, the court expressly noted it was not inclined to give such discretionary credit without the State’s input, and the State objected. Having heard the State’s objection and finding the defendant was free on bond at the time, the court exercised its discretion, choosing to deny defendant’s postconviction petition for the additional sentence credit.

¶ 20 Considering defendant’s prior criminal history, the fact he acquired additional cases while on bond, and the fact he not only failed to appear but apparently falsified a document

presented in court to justify his absence, it was not unreasonable for the trial court to decline the credit requested. We do not find the court's decision to be an abuse of discretion and therefore, we affirm.

¶ 21

### III. CONCLUSION

¶ 22 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

¶ 23 Affirmed.