No. 129402

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- EMANUEL WELLS, Petitioner-Appellant.	)	Appeal from the Appellate Court of Illinois, No. 4-22-0552. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 20-CF-1103. Honorable J. Casey Costigan, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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NATURE OF THE CASE

Emanuel Wells pleaded guilty to one count of unlawful possession of cannabis with the intent to deliver, and the circuit court sentenced him to six years in prison. Wells then moved for additional sentence credit in a *pro se* motion, and the court denied the motion on its merits.

This is a direct appeal from the circuit court's judgment denying the motion. No issue is raised challenging the charging instrument.

ISSUE PRESENTED FOR REVIEW

While felony drug charges were pending against him, Emanuel Wells spent 54 days in jail, then 208 days at home while under a curfew and electronic monitoring. Wells's fully negotiated plea included credit for the 54 days, without mention of the time he spent in home detention. Did Wells's plea implicitly waive the other 208 days of credit, or should he receive the full 262 days of credit to which he is entitled by statute?

STATUTES INVOLVED

730 ILCS 5/5-4.5-100 (eff. July 1, 2021).

§ 5-4.5-100. Calculation of term of imprisonment.

(a) COMMENCEMENT. A sentence of imprisonment shall commence on the date on which the offender is received by the Department or the institution at which the sentence is to be served.

(b) CREDIT; TIME IN CUSTODY; SAME CHARGE. Except as set forth in subsection (e), the 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 Department shall calculate the credit at the rate specified in Section 3-6-3 (730 ILCS 5/3-6-3). The trial court shall give credit to the defendant for time spent in home detention on the same sentencing terms as incarceration as provided in Section 5-8A-3 (730 ILCS 5/5-8A-3). Home detention for purposes of credit includes restrictions on liberty such as curfews restricting movement for 12 hours or more per day and electronic monitoring that restricts travel or movement. Electronic monitoring is not required for home detention to be considered custodial for purposes of sentencing credit. 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.

(c) CREDIT; TIME IN CUSTODY; FORMER CHARGE. An offender arrested on one charge and prosecuted on another charge for conduct that occurred prior to his or her arrest shall be given credit on the determinate sentence or maximum term and the minimum term of imprisonment for time spent in custody under the former charge not credited against another sentence.

(c-5) CREDIT; PROGRAMMING. The trial court shall give the defendant credit for successfully completing county programming while in custody prior to imposition of sentence at the rate specified in Section 3-6-3 (730 ILCS 5/3-6-3). For the purposes of this subsection, "custody" includes time spent in home detention.

(d) (Blank).

(e) NO CREDIT; REVOCATION OF PAROLE, MANDATORY SUPERVISED RELEASE, OR PROBATION. An offender charged with the commission of an offense committed while on parole, mandatory supervised release, or probation shall not be given credit for time spent in custody under subsection (b) for that offense for any time spent in custody as a result of a revocation of parole, mandatory supervised release, or probation where such revocation is based on a sentence imposed for a previous conviction, regardless of the facts upon which the revocation of parole, mandatory supervised release, or probation is based, unless both the State and the defendant agree that the time served for a violation of mandatory supervised release, parole, or probation shall be credited towards the sentence for the current offense.

730 ILCS 5/5-8A-3 (eff. Jan 8, 2018).

§ 5-8A-3. Application.

(a) Except as provided in subsection (d), a person charged with or convicted of an excluded offense may not be placed in an electronic monitoring or home detention program, except for bond pending trial or appeal or while on parole, aftercare release, or mandatory supervised release.

. . .

(d) A person serving a sentence for conviction of an offense other than for predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, or felony criminal sexual abuse, may be placed in an electronic monitoring or home detention program for a period not to exceed the last 12 months of incarceration, provided that (i) the person is 55 years of age or older; (ii) the person is serving a determinate sentence; (iii) the person has served at least 25% of the sentenced prison term; and (iv) placement in an electronic monitoring or home detention program is approved by the Prisoner Review Board or the Department of Juvenile Justice.

. . .

730 ILCS 5/5-8A-2 (eff. July 1, 2021).

§ 5-8A-2. Definitions. As used in this Article:

. . .

(B) "Excluded offenses" means first degree murder, escape, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05, bringing or possessing a firearm, ammunition or explosive in a penal institution, any "Super-X" drug offense or calculated criminal drug conspiracy or streetgang criminal drug conspiracy, or any predecessor or successor offenses with the same or substantially the same elements, or any inchoate offenses relating to the foregoing offenses.

. . .

(C) "Home detention" means the confinement of a person convicted or charged with an offense to his or her place of residence under the terms and conditions established by the supervising authority. Confinement need not be 24 hours per day to qualify as home detention, and significant restrictions on liberty such as 7pm to 7am curfews shall qualify. Home confinement may or may not be accompanied by electronic monitoring, and electronic monitoring is not required for purposes of sentencing credit.

. . .

(F) "Super-X drug offense" means a violation of Section 401(a)(1)(B), (C), or (D); Section 401(a)(2)(B), (C), or (D); Section 401(a)(3)(B), (C), or (D); or Section 401(a)(7)(B), (C), or (D) of the Illinois Controlled Substances Act.

. . .

STATEMENT OF FACTS

On October 11, 2020, Emanuel Wells was arrested at the Bloomington, Illinois airport with a large amount of cannabis. (R. 15–16). He was charged with one count of cannabis trafficking, one count of unlawful possession of cannabis with intent to deliver, and one count of unlawful possession of cannabis. (C. 12–14, 49–51). He remained in custody after his arrest, with bond originally set at $400,000. (C. 6).

About six weeks later, Wells's bond was reduced to $125,000. (C. 8, R. 23–25). Knowing that Wells's family would now be able to post his bond, the court also modified the conditions of Wells's bond such that he would be required to submit to GPS monitoring and abide by a curfew. (R. 23–25). Court Services would be supervising Wells, and he would not be able to leave his house except for work, church, and medical appointments. (R. 23). The court explained to Wells that it was "a situation where you're not going to have much control"—Wells would "be out, but [he was] not going to have much control [of his own] movement." (R. 24).

The court entered an Order for Electronic Monitoring, which indicated that Wells would be subject to "GPS Monitoring with 24 hour Home Confinement," and a "Pretrial Release Order," which repeated that Wells would have to "[a]bide by the terms and conditions of Electronic Monitoring, as per separate order." (C. 76, 78). Bond was posted on Wells's behalf on either December 1 or December 2, 2020. (C. 8, 84, 86). Because Wells could not be released until he was fitted with the electronic monitoring device, Wells did not actually leave jail until December 3, 2020. (C. 112, 115, 130).

In early January of 2021, the conditions of Wells's bond were relaxed, allowing him to leave his home from 9:00 a.m. to 3:00 p.m. so that he could pick up and drop off his child and continue to search for a job. (R. 31–32). He found a job as a forklift operator, and that April, his curfew was extended to 8:00 p.m. each night. (C. 98, 102; R. 35).

On June 29, 2021, Wells asked for another relaxation in his bond conditions. As Wells had been in compliance with the conditions, neither the State nor Court Services had any objection, and so the court modified Wells's bond conditions to allow for the wholesale removal of the GPS monitor and curfew. (C. 105; R. 44–46).

On November 5, 2021, Wells entered a fully negotiated guilty plea to Count 2 of the indictment—that is, to unlawful possession of cannabis with the intent to deliver, a Class X felony. (C. 10, 112,[1] 115; R. 55–56, 59–60). Pursuant to the agreement, the other two charges were dismissed. (C. 10, 115; R. 56). In return for his plea, Wells would receive an agreed-upon sentence: the six-year minimum. (C. 112, 115; R. 56, 59–60).

The judgment sheet indicates that Wells was "entitled to receive credit" for 54 days of time served in custody—that is, from October 11 to December 3 of 2020. (C. 112). Wells's written plea agreement similarly states, "CREDIT 10/11/2020 TO 12/03/2020 (54 DAYS)." (C. 115). When explaining to Wells its understanding of the parties' agreement, the court told him:

> "It's my understanding that you've reached an agreement today to where you would be pleading guilty to that charge. You would pay the fines and costs that are summarized in the financial sentencing order that I'm showing to you. There would be a $100,000 street value fine, sentenced to six years in the Department. You have credit for 54 days at this point in time. Your fines and costs would be taken care of within three years from your release from the Department. And, apparently . . . Counts 1 and 3 would be dismissed."

(R. 56). Wells agreed that this description "accurately reflect[ed]" the agreement. (R. 56). The court confirmed that Wells's plea was knowing and voluntary, imposed sentence, and read Wells his appeal rights. (R. 56–61). Wells's written plea agreement is silent as to the time

[1] The judgment sheet states that Wells was sentenced on a conviction for count "TWO," a violation of "720 ILCS 550/5.1A." (C. 112). Wells's plea was to Count 2, unlawful possession of cannabis with the intent to deliver, which was charged under 720 ILCS 550/5(g). (C. 50; R. 55). It is Count 1, cannabis trafficking, that was charged under 720 ILCS 550/5.1(a). (C. 49). Wells's written plea agreement, the transcript of his plea hearing, and indeed the record as a whole all show that the citation to section "5.1A" is merely a scrivener's error. (C. 10, 49–50, 115; R. 55–60).

he spent on GPS monitoring, and at no point during Wells's plea hearing was GPS monitoring mentioned by anyone. (C. 115; R. 55–61).

Wells did not move to withdraw his plea or reconsider his sentence. (C. 10–11). On March 31, 2022, Wells (now *pro se*) filed a motion asking for additional sentence credit, which he handwrote onto a typed form bearing the title "Motion for Order *Nunc Pro Tunc*." (C. 133). In his motion, Wells explained that he was entitled to 166 days, from "12-3-20/6-16-21," because he spent those days on "GPS Monitoring." (C. 133–34).

The court denied Wells's motion without a hearing, noting in a docket entry: "Defendant was given the correct pretrial detention credit on this case." (C. 11). Less than 30 days later, Wells appealed the denial of his motion. (C. 11).

On appeal, Wells argued that the trial court had erred in denying his motion because: (1) he is entitled to an additional 208 days of presentence custody credit, having spent December 3, 2020, through June 29, 2021, on GPS monitoring; and (2) he did not explicitly agree to waive these 208 days of credit in his plea agreement. *People v. Wells*, 2023 IL App (4th) 220552-U, ¶¶ 2, 10, (App. at A-9 –A-16). The Fourth District Appellate Court affirmed. *Id.* ¶¶ 1–2, 26, 30, 32–33. Relying on contract principles and its decisions in *People v. Williams*, *People v. Evans*, and *People v. Getty*, the court held that a fully negotiated guilty plea constitutes a waiver of all presentence credit not provided for in the plea agreement. *Id.* ¶¶ 13–26, 30 (citing *Williams*, 384 Ill. App. 3d 415, 416–17 (4th Dist. 2008); *Evans*, 391 Ill. App. 3d 470, 474 (4th Dist. 2009); *Getty*, 2021 IL App (4th) 200215-U,[2] ¶¶ 4–10).

This Court granted Wells's petition for leave to appeal on May 24, 2023.

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[2] As required by this Court's Rule 23(e)(1), a copy of *Getty* is furnished in the Appendix to this brief. Ill. S. Ct. R. 23(e)(1) (eff. Feb. 1, 2023), (App. at A-39–A-42).

ARGUMENT

Emanuel Wells is entitled by statute to an additional 208 days of presentence custody credit covering the time he spent in home detention. As Wells's plea agreement is silent as to his time in home detention, the trial court erred when it denied his *pro se* motion seeking that credit, and this Court should award him the 208 days of credit rather than add a waiver of the credit to Wells's fully negotiated guilty plea.

While felony drug charges were pending against him, Emanuel Wells spent 54 days in jail. His family then posted bond, and Wells spent the next 208 days under home detention while subject to a curfew and GPS monitoring. Wells complied with these conditions so well that his curfew was relaxed to allow for his childcare duties and new job as a forklift operator; eventually, the curfew and monitor were removed, with no objection from the State or Court Services.

About four months later, Wells pleaded guilty to one of the charges against him in return for dismissal of the others and an agreed minimum sentence of six years' incarceration. In his plea agreement and at his plea hearing, Wells was told that he would receive credit for the 54 days he spent in jail. Wells did not say that he was waiving all credit for the time he spent under home detention; in fact, Wells's time on GPS monitoring was not mentioned at any point during his plea hearing. Every indication in this record is that the parties were simply unaware, at Wells's November 2021 sentencing, that Wells had spent time in home detention that earned him sentencing credit. After all, the curfew and monitoring had been removed in June, and it was in July that the legislature amended the credit statute to clarify that people in Wells's position were considered to be in home detention. (C. 112, 115); Pub. Act 101-652, § 10-281 (eff. July 1, 2021) (amending 730 ILCS 5/5-4.5-100).

The legislature has mandated that trial courts "shall give credit to the defendant for time spent in home detention on the same sentencing terms as incarceration." 730 ILCS 5/5-4.5-100 (2021). Yet when Emanuel Wells asked the trial court to give him credit for the time he spent in home detention, the court refused, and the appellate court affirmed.

Wells's plea agreement provided that he would receive credit for the 54 days he spent in jail. It does not mention the time he spent in home detention, but neither does it discuss and dismiss his right to credit for this time. Because Wells did not explicitly agree to exclude the credit for the time he spent in home detention from his plea agreement, he has not waived his right to the credit. This Court should award him the 208 days of additional credit, to which he is entitled by law.

STANDARD OF REVIEW

Whether a defendant is entitled to receive credit for time spent in presentence custody is subject to *de novo* review. *People v. Clark*, 2014 IL App (4th) 130331, ¶ 16; accord *People v. Robinson*, 172 Ill. 2d 452, 457 (1996) (finding that the determination of sentence credit is a matter of statutory construction, reviewed *de novo*).

ARGUMENT AND ANALYSIS

"A defendant has the right to first request sentencing credit at any time unless . . . he agreed to forego it as part of a plea or other sentencing agreement." *People v. Williams*, 384 Ill. App. 3d 415, 417 (4th Dist. 2008). This case therefore turns on three questions: whether Emanuel Wells was entitled to sentencing credit, whether he requested it of a court with jurisdiction to grant the request, and whether he agreed to forego it as part of his plea agreement. This brief addresses each of those questions in turn. The answer to the first two questions is "yes." The answer to the third, given the absence of any evidence of a knowing agreement to forego the credit, is "no."

A. Emanuel Wells is entitled by statute to an additional 208 days of presentence credit, as he spent this time in home detention under GPS monitoring.

Emanuel Wells spent more than half of a year pretrial in home detention under a curfew and GPS monitoring: from December 3, 2020, when he was released from the county jail, to June 29, 2021, when the monitor was removed due to Wells's compliance with the conditions

of his bond. (C. 112, 115). During this time, his travel was restricted, and he was "constantly monitored [as] probation receive[d] constant updates on [his] movements." (R. 24). Despite these restrictions on his liberty, Wells managed to find full-time employment, and eventually, the restrictions were removed entirely. (C. 6–10, 89, 98–99; R. 30–31, 35, 45–46).

On November 5, 2021, Wells pleaded guilty to one of the charges against him, and the court sentenced him to six years' incarceration. (C. 113). He was awarded presentence credit for the 54 days he spent in the custody of the county jail, but none for the 208 days that he spent in home detention. (C. 113). Under the law in effect at the time of his sentencing, Wells should have received credit for the 208 days as well. See 730 ILCS 5/5-4.5-100(b) (2021).

An amended version of 730 ILCS 5/5-4.5-100 took effect on July 1, 2021, and thus applied to Wells's sentencing on November 5, 2021. (C10); 730 ILCS 5/5-4.5-100; see, *e.g.*, *People v. Reyes*, 2016 IL 119271, ¶ 12 (quoting *People v. Hollins*, 51 Ill. 2d 68, 71 (1972), for the proposition that a defendant is entitled to be sentenced under the law in effect at the time of the offense or the time of sentencing). The version of subsection 5-4.5-100(b) in effect at Wells's sentencing mandated that a defendant:

> "shall be given credit . . . for the number of days spent in custody as a result of the offense for which the sentence was imposed. . . . The trial court shall give credit to the defendant for time spent in home detention on the same sentencing terms as incarceration as provided in Section 5-8A-3 (730 ILCS 5/5-8A-3). Home detention for purposes of credit includes restrictions on liberty such as curfews restricting movement for 12 hours or more per day and electronic monitoring that restricts travel or movement. Electronic monitoring is not required for home detention to be considered custodial for purposes of sentencing credit."

730 ILCS 5/5-4.5-100(b).

The determining factor in whether Wells is entitled to sentencing credit is whether he spent time in "home detention" within the meaning of the statute. See *id.* Subsection 5-4.5-100(b) explains that "[h]ome detention for purposes of credit includes restrictions on liberty such as curfews restricting movement for 12 hours or more per day and electronic monitoring that

restricts travel or movement. Electronic monitoring is not required for home detention to be considered custodial for purposes of sentencing credit." 730 ILCS 5/5-4.5-100(b).The terms of Wells' electronic monitoring fit squarely within the parameters described by the legislature.

There were restrictions on Wells' liberty throughout the entire time he wore the GPS monitor. (C. 8, 76–78, 98–99, 102; R. 23–25, 31, 35). His whereabouts were monitored 24 hours per day, and he could only leave his house during specific authorized times for specifically authorized activities. He was initially subject to 24-hour home confinement unless he was working, attending church services or medical appointments, or dealing with an emergency. (C. 76; R. 23–24). Beginning in January of 2021, he was required to be in his house from 3:00 p.m. until 9:00 a.m. the following morning—an 18-hour restriction on his movement. (R. 31). After April 9, 2021, Wells was able to be away from his house for up to 13 hours each day to allow him to continue to attend to personal and family-related matters after he obtained steady, full-time employment. (C. 98–99, 102; R. 35). Even then, Wells was under home detention. While the statute refers to "curfews restricting movement for 12 hours or more per day," it does so in the context of a list of credit-qualifying restrictions that is illustrative, not exhaustive. See 730 ILCS 5/5-4.5-100(b) ("Home detention for purposes of credit *includes* restrictions on liberty *such as* curfews restricting movement for 12 hours or more per day . . . .") (emphasis added). The fact that Wells was able to be away from his home for slightly over 12 hours does not suggest that he no longer qualified for sentence credit. (C. 98, 102). He still had a curfew of 8:00 p.m., he was still subject to 24-hour GPS monitoring, and his movement was still restricted substantially. (C. 98, 102).

While there are other statutory restrictions on what counts as "home detention," none of them apply here. For instance, under 730 ILCS 5/5-8A-2, a person's home confinement must be supervised by a qualifying authority in order to fit the plain language

of the statute. 730 ILCS 5/5-8A-2 (2021). This is why, for example, a defendant who is supervised by a private traffic school rather than the probation department is not eligible for sentence credit. *People v. Smith*, 2014 IL App (3d) 130548, ¶¶ 35–43. And while a panel of the Appellate Court has held that a person is not on "home detention" if the trial court (rather than the probation department) sets the terms and conditions of his bond, this holding ignored the recent amendments to the home detention statute, which added a Chief Judge's office to the list of approved supervising authorities. Compare *People v. Donahue*, 2022 IL App (5th) 200274, ¶ 32; with 730 ILCS 5/5-8A-2(E) (eff. July 1, 2021) (adding "a Chief Judge's office" and a "pretrial services division or department" to a list of qualifying authorities that already included "any other officer or agency charged with authorizing and supervising electronic monitoring and home detention.").

The record in this case is replete with evidence that Pretrial Services, not the trial court, was doing the actual supervision. For instance, the only time that Wells was not compliant with his home confinement—a seven-minute period one afternoon, less than ten minutes after his curfew, during which he went across the street to get gas—it was Pretrial Services that filed a notice of the violation and recommended no action be taken. (C. 8; R. 31; CS. 19–21). And when Wells got a new job that required him to start work at 7:00 a.m., he apparently began this job with Pretrial Service's knowledge but without explicit permission from the court. (C. 98–99; R. 31; Sup. R. 6). In light of the legislature's repeated amendments expanding the scope of the home detention statute, this Court can be certain that the legislature's intent was for Emanuel Wells to receive credit.

Similarly, Section 5-8A-3 contains a restriction on the availability of home detention for people charged with "excluded offenses" including "Super-X" drug offenses. 730 ILCS 5/5-8A-3 (2021). But the statute explicitly provides that even in such cases, home detention

is available while on "bond pending trial." 730 ILCS 5/5-8A-3(a) (2021). What is more, Emanuel Wells was not actually charged with an excluded offense. See generally 730 ILCS 5/5-8A-3.[3] The 208-day period that Wells spent under electronic monitoring and a curfew was a period where he was on bond pending trial. (C. 8–10). He was eligible for home detention, and therefore for sentence credit. 730 ILCS 5/5-4.5-100(b).

And while this Court held in *People v. Ramos* and *People v. Beachem* that older versions of the sentence-credit statute did not award credit to defendants who are released on bond, these holdings are inapplicable to the current version, which contains new language post-dating those decisions. *Ramos*, 138 Ill. 2d 152, 153–54 (1990) (interpreting the 1990 version of the statute to exclude home detention while out on bail); 730 ILCS 5/5-8-7(b) (1990) ("[T]he offender shall be given credit . . . for time spent in custody as a result of the offense for which the sentence was imposed."); *Beachem*, 229 Ill. 2d 237, 250–53 (2008) (distinguishing "custody" and "confinement," as used in the 2004 version of the statute, from bond); 730 ILCS 5/5-8-7(b) (2004) ("The trial court may give credit to the defendant for time spent in home detention . . . if the court finds that the detention or confinement was custodial."). Ever since the July 1, 2021, amendment to the statute, home-detention credit is mandatory. *Id.* § 5-4.5-100(b) ("The trial court shall give credit to the defendant for time spent in home detention . . . ."). It is separate from incarceration. *Id.* ("The trial court shall give credit to the defendant for time

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[3] While the issue of whether an excluded offense was involved does not matter given the "bond pending trial" exception, Wells notes that in his appellant's brief below, he wrongly conceded that cannabis trafficking was an excluded offense. (See Opening appellate brief, p. 9). Despite the enhanced penalties Wells would have faced if convicted of cannabis trafficking, cannabis trafficking is not a "Super-X" drug offense or "excluded offense" under the plain language of the statute. 730 ILCS 5/5-8A-3(b) (2021) (providing a list of "excluded offenses" which includes "any 'Super-X' drug offense"); 730 ILCS 5/5-8A-3(f) (2021) (defining a Super-X drug offense as "a violation of Section 401(a)(1)(B), (C), or (D); Section 401(a)(2)(B), (C), or (D); Section 401(a)(3)(B), (C), or (D); or Section 401(a)(7)(B), (C), or (D) of the Illinois Controlled Substances Act"); (C. 59–61 (charging Wells not under the Controlled Substances Act, but under the Cannabis Control Act)).

spent in home detention on the same sentencing terms as incarceration . . . ."). And it plainly applies to defendants who are out on bond. *Id.* ("Home detention for purposes of credit includes restrictions on liberty such as curfews . . . and electronic monitoring that restricts travel or movement.").

Accordingly, under the plain language of subsection 5-4.5-100(b) as it stood at the time of his sentencing,Wells was in home detention during the period of time he wore the GPS monitor, and he is entitled to credit toward his sentence for that time. 730 ILCS 5/5-4.5-100(b). Accordingly, the trial court erred when it refused to award Wells credit for the additional 208 days, contravening the legislature's command that a defendant "*shall* be given credit" for time spent in home detention. *Id.* (emphasis added); accord *People v. Woodard*, 175 Ill. 2d 435, 445 (1997) (finding that sentencing provisions that "employ the word 'shall' to confer a statutory right to credit" appear to be mandatory); *People v. Scheib*, 76 Ill. 2d 244, 250 (1979) (same). This Court should award Wells credit for the additional 208 days, bringing the total amount of time he should receive credit for to 262 days, or from October 11, 2020, the date of Wells' arrest, to June 29, 2021, the date the GPS monitor was removed. (C. 9, 105, 129; R. 45–46); accord Ill. S. Ct. R. 366(a) (eff. Feb. 1, 1994) (empowering a reviewing court to amend a mittimus to correct errors); *People v. Montalvo*, 2016 IL App (2d) 140905, ¶ 29 (amending the mittimus to award the defendant additional sentencing credit).

B. Wells's request for the credit to which he is entitled was correctly characterized by the trial and appellate courts as a Rule 472 motion, and the trial court had jurisdiction to award him the credit.

This Court's Rule 472 provides a trial court with jurisdiction to correct errors in the calculation of presentence credit. Ill. S. Ct. R. 472(a)(3) (eff. May 17, 2019). A trial court's jurisdiction to correct these errors is retained "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) (eff. May 17, 2019). Outside of the jurisdiction created by Rule 472, a trial court may not modify its judgment after it becomes final. See, *e.g.*, *People v. Coleman*, 2017 IL App (4th) 160770, ¶¶ 19–23 (finding, before Rule 472 had taken effect, that errors in the calculation of presentence credit could not be addressed via a *nunc pro tunc* order).

It is settled law that "the character of [a] pleading should be determined from its contents, not its label . . . ." *In re Haley D.*, 2011 IL 110886, ¶ 67. The need to focus on substance rather than labels becomes even more pressing when a pleading is drafted by an incarcerated person writing the pleading *pro se*. See, *e.g.*, *People ex rel. Palmer v. Towmey*, 53 Ill. 2d 479, 484 (1973) (finding that "however labeled, and however inartfully drawn," if a pleading brings a collateral attack against a conviction and alleges cognizable violations of a petitioner's rights, it should be treated as a petition under the Post-Conviction Hearing Act).

Here, Emanuel Wells filed a motion asking for additional sentence credit, which he handwrote onto a typed form styled as a "Motion for Order *Nunc Pro Tunc*." (C. 133). But while Wells' *pro se* filing was captioned as a "Motion for Order *Nunc Pro Tunc*," that caption was pre-printed on the form motion that Wells filled out and filed. (C. 133–34). The caption on that pre-printed form does not control over the contents of the motion itself, which clearly demonstrate that Wells sought relief which was only available pursuant to this Court's Rule 472. (C. 133–34). The motion indicated that Wells was seeking credit for time served "in GPS monitoring." (C. 134). It stated what sentence had been imposed, the name of the judge who had imposed it, and the date of sentencing. (C. 133–34). And it cited 730 ILCS 5/5-4.5-100 for its requirement that Wells be "given credit . . . for time spent in custody . . . ." (C. 133). The motion, despite its caption, was substantively a Rule 472 motion. (C. 133–34); *Towmey*, 53 Ill. 2d at 484.

Wells's motion also included an attempt to calculate how much additional credit Wells had earned. (C. 133). According to the motion, Wells was entitled to 166 days of credit, from "12-3-20" to "6-16-21." (C. 133). But there are actually 196 days during that period of time. And, as articulated *supra*, Wells is entitled to credit for 208 days: from December 3, 2020, when he was released from the county jail into home detention on a GPS monitor, until June 29, 2021, when the GPS monitor was removed. (See *supra* Argument I-A). In this appeal, Wells seeks the full 208 days of credit.

The trial court appears to have recognized and treated the document as Rule 472 motion. After all, the trial court denied Wells's motion on the merits, finding that he "was given the correct pretrial detention credit on this case." (C. 11). If Wells's motion was not construed as a Rule 472 motion, the trial court's only choice would have been to strike the motion for lack of jurisdiction, not to deny it on the merits. See *Coleman*, 2017 IL App (4th) 160770, ¶¶ 19–25.

The State did not object at the trial level to the court's apparent determination that the motion was brought pursuant to Rule 472 and has thus forfeited the right to object to the characterization of the motion as a Rule 472 motion. (C. 11). The failure of the prosecution to argue an issue before the trial court deprives the court of the opportunity to address that argument. See *People v. Damian*, 299 Ill. App. 3d 489, 494 (1st Dist. 1998) (citing *People v. Enoch,* 122 Ill. 2d 176, 185 (1988)). The doctrine of forfeiture applies to the State as well as to the defense. *People v. McKown*, 236 Ill. 2d 278, 308 (2010) (citing *People v. Williams*, 193 Ill. 2d 306, 347 (2000)). Here, Wells served a copy of his *pro se* motion on the State. (C. 135). The State did not file an objection to the motion, or move to strike it. (C. 10–11). Nor did the State object to the trial court ruling on the merits of the motion, a copy of which was sent to the State. (C. 11). Accordingly, the State is collaterally estopped from complaining that Wells's motion was improperly captioned—it consented to the trial court's consideration of the motion

and ruling on its merits. See, *e.g.*, *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004) ("Simply stated, a party cannot complain of error which that party induced the court to make or to which that party consented.").

The appellate court, too, appears to have treated Wells's motion as a Rule 472 motion. See generally *People v. Wells*, 2023 IL App (4th) 220552-U, (App. at A-9–A-16). While the appellate court affirmed the trial court's denial of sentence credit, it did so after reaching the merits—not the question of whether Wells was entitled to the credit, admittedly, but much more than a mere consideration of the trial court's jurisdiction. *Id.* ¶¶ 10–33. "[A]n appellate court has no authority to address the substantive merits of a judgment entered by a trial court without jurisdiction . . . . [I]n those cases, the appellate court is limited to considering the issue of jurisdiction below." *People v. Bailey*, 2014 IL 115459, ¶ 29. As previously noted, the trial court had no jurisdiction to reach the merits of Wells's claim except by characterizing the "Motion for Order *Nunc Pro Tunc*" as a Rule 472 motion. *Coleman*, 2017 IL App (4th) 160770, ¶¶ 19–25. Under *Bailey*, the same is true of the appellate court. 2014 IL 115459, ¶ 29. The motion was brought under Rule 472, despite its pre-printed caption.

In summary, then, Emanuel Wells is entitled to 208 days of additional time-served credit. (See *supra*, Argument I-A). He asked the trial court to award him the credit, when the trial court had the power to do so. Ill. S. Ct. R. 472(a)(3). The only remaining question is whether Wells, by signing a plea agreement that made no mention of this credit, affirmatively agreed to forego the credit that he is entitled to by statute. He did not.

C. Wells's plea agreement did not waive his right to the credit, and this Court should hold that a waiver of statutorily mandated credit cannot be presumed from a silent record. Accordingly, this Court should award Wells with 208 additional days of credit.

Given that Wells was entitled to 208 additional days of credit, he had the right to request that sentencing credit any time unless he "agreed to forego it as part of a plea or other sentencing agreement." *People v. Getty*, 2021 IL App (4th) 200215-U, ¶ 20; *Williams*, 384 Ill. App. 3d at 417.

Here, the terms of Wells's fully negotiated guilty plea can be seen from the record, and nothing indicates that he discussed home-detention credit and agreed to waive it. According to Wells's plea agreement, he would plead guilty to unlawful possession of cannabis with the intent to deliver, a Class X felony. (C. 10, 112, 115; R. 55–56, 59–60). In return, the other two charges against him would be dismissed, and he would receive a six-year sentence of incarceration. (C. 10, 112, 115; R. 56, 59–60). He would also receive credit for 54 days that he served in the county jail: in the plea agreement's phrasing, "CREDIT 10/11/2020 TO 12/03/2020 (54 DAYS)." (C. 112, 115).

The court's colloquy with Wells covered the same ground, with some added discussion of the financial consequences of Wells's plea:

> "It's my understanding that you've reached an agreement today to where you would be pleading guilty to that charge. You would pay the fines and costs that are summarized in the financial sentencing order that I'm showing to you. There would be a $100,000 street value fine, sentenced to six years in the Department. You have credit for 54 days at this point in time. Your fines and costs would be taken care of within three years from your release from the Department. And, apparently . . . Counts 1 and 3 would be dismissed."

(R. 56. At no point during the plea-and-sentencing hearing did the court or either party mention that Wells had spent more than half of a year being tracked by a GPS device and abiding by a curfew. (R. 55–61).

But from a practical perspective, this makes sense. The GPS monitor had been removed in June 2021, roughly four months before Wells's plea hearing. (C. 9–10, 105; R. 45–46). It was only a month later that the legislature amended the credit statute to make it explicit that electronic monitoring and a curfew are credit-earning components of home detention. Pub. Act 101-652, § 10-281 (eff. July 1, 2021) (amending 730 ILCS 5/5-4.5-100 to add: "Home detention for purposes of credit includes restrictions on liberty such as curfews restricting movement for 12 hours or more per day and electronic monitoring that restricts travel or movement. Electronic monitoring is not required for home detention to be considered custodial

for purposes of sentencing credit."). While there is no question here that the amended statute applies to Wells, as it was effective before his sentencing, there was never a moment during Wells's period in home detention where the law included an explicit declaration that he would be receiving credit for every day of that period. In contrast, Wells had spent 54 days in the county jail after his arrest—a fact which everyone, including the McLean County Sheriff, remembered—and even at the time, everyone would have been aware that every day in jail would mean a day of credit. (C. 9–10, 105; R. 45–46). What is more, by the time he pleaded guilty, Wells was arriving at his court dates on his own recognizance, without any sort of monitoring by Pretrial Services; the parties may not have even remembered that he was ever in home detention at all. (C. 9–10, 105; R. 45–46). Whether it was because they forgot Wells was in home detention, or because they failed to realize that his home detention had been credit-earning, the parties appear to have been simply unaware, at Wells's November 2021 sentencing, that Wells had spent time in home detention that earned him sentencing credit.

This case is therefore very similar to *People v. Malone*, in which the Third District Appellate Court considered a defendant's claim that he should receive additional credit toward his prison sentence for completing substance-abuse programming while in jail. 2023 IL App (3d) 210612, ¶ 1. Like Wells, Malone had entered a fully negotiated guilty plea—in his case, to one count of unlawful possession of a weapon by a felon, in return for a 10-year prison sentence and the dismissal of several other charges. *Id.* ¶ 4. Like Wells's plea, Malone's included an explicit discussion of the run-of-the-mill type of sentence credit: credit for the days that Malone had spent in the county jail prior to his sentencing. *Id.* And just like it had for Wells, the legislature had mandated that Malone be awarded a more unusual form of credit: in Malone's case, credit for substance-abuse and behavior-modification courses that he had completed while in jail. *Id.* ¶ 7; see 730 ILCS 5/5-4.5-100(c-5) (2020) ("The trial court *shall* give the defendant credit for successfully completing county programming while in custody prior to imposition of sentence . . . .") (emphasis added).

Malone, aware that he had not received the credit that he had earned, asked the circuit court to award him the credit, but the court denied the request, finding that the negotiated nature of Malone's plea barred him from receiving anything that was not explicitly set out in the plea. 2023 IL App (3d) 210612, ¶ 10. The appellate court reversed, remanding the case so that the trial court could determine precisely how much programming Malone had attended and therefore how much credit he had earned. *Id.* ¶ 22.

At the heart of the court's decision was the fact that the record was "devoid of any discussion by the parties about defendant's eligibility for" programming-based credits. *Id.* ¶ 20. After all, when a defendant discusses a certain term and intentionally chooses not to include it in his plea agreement, he has received what he bargained for and cannot seek to "sweeten the deal" while holding the State to its end of the bargain. *Wells*, 2023 IL App (4th) 220552-U, ¶ 29; accord *People v. Evans*, 391 Ill. App. 3d 470, 474 (4th Dist. 2009) (finding that it "would be unfair" to allow a defendant whose fully negotiated plea explicitly mentioned a $200 public defender fee to challenge that fee on appeal while leaving the rest of the plea undisturbed). But in Malone's case, the programming-based credit was not mentioned in plea negotiations, likely because Malone "did not know the credits were available and his attorney did not know he completed any programs." 2023 IL App (3d) 210612, ¶ 20. Because the "record [did] not conclusively show that the parties agreed to exclude credit as part of the plea agreement," the Third District reasoned, "the circuit court should not [have denied the] defendant's motion to amend the mittimus to reflect the credit." *Id.* ¶ 19 (citing *People v. Ford*, 2020 IL App (2d) 200252, ¶ 28).

When a defendant (unlike here) explicitly agrees to waive presentence credit to which he would otherwise be entitled, in contrast, it is perfectly correct for a court to deny the defendant's later request for the credit. *Williams*, 384 Ill. App. 3d at 416–17. In *People v. Williams*,

for instance, the Fourth District Appellate Court considered the arguments of a defendant who had been denied credit for the two days he spent in jail prior to his sentencing. *Id.* at 416–17. Unlike in *Malone*, and indeed unlike in this case, Williams had explicitly waived the credit in question. *Id.* At sentencing after Williams's stipulated bench trial, the State "presented an agreed sentence of 24 months' probation, 60 days in Douglas County jail, 'with no days[']pre-sentence credit,' a substance-abuse evaluation and treatment, and the payment of enumerated fines, costs, and fees." *Id.* at 416. Defense counsel agreed that the sentence included "no credit for previous time in custody," and when it pronounced sentence, the court clarified that the 60-day jail sentence was "with no credit." *Id.* So when, on appeal, Williams asked for the two days of credit, the Fourth District affirmed the denial of his request, noting that "a defendant who received the benefit of his bargain cannot be heard to repudiate it." *Id.* at 417 (citing *People v. Maltimore*, 268 Ill. App. 3d 532, 535 (5th Dist. 1994)).

In some cases, it will be unclear from the appellate record whether or not a defendant has bargained away his sentence credit. The Second District Appellate Court was confronted with one such record in *People v. Ford*, which concerned a man who was charged in two separate cases involving a battery to one child and the death by drowning of another. 2020 IL App (2d) 200252, ¶¶ 1–5, 23, 26. Roughly a year after the offenses were committed, Ford pleaded guilty to endangering the life of a child in return for the dismissal of the battery case. *Id.* ¶¶ 4–6. At sentencing, the parties indicated that they had agreed to a sentence: seven years in prison, with 172 days' credit for time served in jail. *Id.* ¶ 7. When the court asked Ford if he had any questions, Ford said that he was a "tad bit confused" about whether he would receive credit for the time he spent in jail on the now-dismissed battery charge. *Id.* The court told him that he could not, and neither the prosecutor nor Ford's counsel commented on the matter. *Id.*

After the court imposed sentence, Ford filed a Rule 472 motion, which the court denied, and Ford appealed. *Id.* ¶¶ 9–11. On appeal, the Second District first noted that Ford *was* statutorily entitled to credit for the time he spent in custody on the battery charge. *Id.* ¶¶ 16–17 (citing 730 ILCS 5/5-4.5-100(c) (2016)). The question was therefore whether Ford had agreed to have this credit as part of his plea agreement. *Id.* ¶ 28. The answer to this question, however, was unclear. *Id.* Looking at the transcript of Ford's plea hearing, the Second District found that it was unable to determine whether any agreement had been reached about the credit in question:

> "In presenting [the] terms [of the agreement], neither counsel mentioned anything about credit for case No. 17-CF-573. Indeed, the subject went unraised until defendant asked the court if he was eligible for such credit. When defendant asked that question, neither counsel commented. Significantly, neither counsel remarked that the plea agreement excluded credit for case No. 17-CF-573 or that such credit was even discussed. Thus, though the plea agreement expressly included credit for time served, the record is unclear whether the parties reached an agreement about credit for case No. 17-CF-573.
>
> Further, we cannot conclude that defendant himself (apart from counsel) agreed to a sentence that excluded credit for case No. 17-CF-573. In response to defendant's question—Am I eligible for credit for case No. 17-CF-573?—the court told him . . . that he was entitled to credit for only case No. 17-CF-3157. In response, defendant said okay and that he had no further questions. Again, neither the prosecutor nor defense counsel commented. Considering that defendant's counsel did not object when the court told defendant that he was not eligible for credit for case No. 17-CF-573, it is not surprising that defendant had nothing further to say."

Id. ¶¶ 21–22. Faced with this uncertainty, the Second District vacated the trial court's denial of Ford's Rule 472 motion and remanded so that the trial court could determine whether Ford had agreed to exclude the additional credit. *Id.* ¶¶ 28–30.

Malone, *Williams*, and *Ford* can be easily read in harmony, and the resulting rule is both logically coherent and simple for circuit and appellate courts to follow. Under this rule, if a defendant and asks for mandatory presentence credit which he has not been awarded after a guilty plea, a court would look to the transcript of the plea hearing and the written terms of the plea agreement. If the parties did not discuss the credit in question, it was not a term

of the plea agreement and the court should award the credit. *Malone*, 2023 IL App (3d) 210612, ¶ 19. If the parties discussed the credit and the defendant explicitly agreed to forego it, the court should not award the credit. *Williams*, 384 Ill. App. 3d at 416–17. And if the record is unclear as to whether the defendant agreed to exclude the credit from the plea, a reviewing court should remand, and a trial court should conduct the necessary factfinding to determine whether or not the defendant agreed to forego the credit. *Ford*, 2020 IL App (2d) 200252, ¶¶ 28–30.

Under this test, Emanuel Wells's case is most analogous to *Malone*. The type of credit which he now seeks is different in character and less common than the credit that was an explicit term of his plea agreement. (C. 133–34). There is a common-sense explanation for why the credit was not mentioned in the plea agreement: he had been out of home detention for four months by the date of his plea, the statute's explicit inclusion of home-detention credit for defendants like Wells only took effect *after* he had the GPS monitor removed, and at his sentencing, the amendment was still relatively new. (C. 9–10, 105; R. 45–46). And the record as a whole bears absolutely no indication of an affirmative waiver of the credit to which Wells is entitled by statute. Under *Malone*, and under a synthesized *Malone–Williams–Ford* test, Wells should be granted the additional credit he has earned.

And unlike *Malone*, there is no doubt here as to *how much* credit that is. In *Malone*, the defendant had requested credit for substance-abuse and behavior-modification courses that he had completed while in jail. 2023 IL App (3d) 210612, ¶ 7. On appeal, the Third District held that "the circuit court erred in denying [the] defendant's motion to amend the mittimus" because there was no evidence that Malone had waived these credits. *Id.* ¶ 21. But the statutes under which Malone sought credit require a defendant to complete a "full-time" program—that is, a minimum of three hours on each day—in order to be eligible for credit. *Id.* ¶¶ 16–17 (citing *Montalvo*, 2016 IL App (2d) 140905, ¶ 20; 20 Ill. Adm. Code 107.520(j)(1) (2022); 20 Ill. Adm. Code 107.520(j)(3)(B) (2022)). In the *Malone* court's words, "if a reviewing court

can determine that the defendant was eligible for sentence credit under section 3-6-3(a)(4) of the Unified Code and how much credit the defendant was entitled to receive, it may amend the mittimus to reflect the proper credit." *Id.* ¶ 18 (citing *Montalvo*, 2016 IL App (2d) 140905, ¶ 20; Ill. S. Ct. R. 366(a) (eff. Feb. 1, 1994)). While the court determined that Malone was eligible for sentence credit, it was unable to determine how much credit Malone was eligible to receive, and so it remanded so that the circuit court could make that determination. *Id.* ¶¶ 20–24.

Here, Wells was eligible for sentence credit for the time he spent on home detention. See *supra* Argument I-A. He remains eligible for that sentence credit despite his guilty plea. See generally Argument I-C; *Malone*, 2023 IL App (3d) 210612, ¶ 18. The amount of credit he is entitled to receive is clear from this record. It is 208 days.

Bond was posted on Wells's behalf on either December 1 or December 2, 2020. (C. 8, 84, 86). Because Wells could not be released until he was fitted with the electronic monitoring device, Wells was not actually released from custody until December 3, 2020. (C. 112, 115, 130). Over the next seven months, the conditions of Wells's bond were relaxed, but he was subject to GPS monitoring and a curfew restricting his movement at all times. (C. 98, 102, 105; R. 31–32, 35, 44–46). Then on June 29, 2021, the court modified Wells's bond conditions to allow for the wholesale removal of the GPS monitor and curfew. (C. 105; R. 44–46). From this, this Court can be certain that if Wells were to receive credit for the time he spent on home detention, the credit he receives would cover December 3, 2020, to June 29, 2021—208 days, not counting the first day because Wells has received credit for the portion of December 3 he spent in jail. (C. 105, 112, 115, 130; R. 44–46). So here, should this Court find that Wells's case is most similar to *Malone*, this Court will have determined both that Wells is eligible for credit and that the amount of credit in question is 208 days. See *Malone*, 2023 IL App (3d) 210612, ¶ 18. No remand would be necessary, and this Court would simply grant Wells the credit. See Ill. S. Ct. R. 366(a) (eff. Feb. 1, 1994).

But at the very minimum, Wells's case is like *Ford*, where the record was ambiguous as to possible waiver. 2020 IL App (2d) 200252, ¶¶ 28–30. Should this Court believe the same about this record, remand is necessary to determine if Wells's plea negotiations included discussion of his time on home detention.

Yet the Fourth District Appellate Court put Emanuel Wells into the *Williams* category, reading an affirmative relinquishment of more than half a year of sentence credit into a plea agreement that is silent on the matter. *Wells*, 2023 IL App (4th) 220552-U, ¶ 22. This was error. As both the Second and Third Districts have observed, a claim of error in the calculation of sentence credit cannot be waived where the credit is mandatory. *People v. Whitmore*, 313 Ill. App. 3d 117, 120–21 (2d Dist. 2000) (citing *People v. Woodard*, 175 Ill. 2d 435, 457 (1997)); *People v. Brown*, 2017 IL App (3d) 140907, ¶ 9 (citing *People v. Hill*, 2014 IL App (3d) 120472, ¶ 27; *People v. Johnson*, 401 Ill. App. 3d 678, 683–84 (2d Dist. 2010)). Here, the Fourth District's approach finds not only waiver, but *implicit* waiver. *Wells*, 2023 IL App (4th) 220552-U, ¶ 22.

This Court has repeatedly reaffirmed the principle that "waiver is the intentional relinquishment of a known right." See, *e.g.*, *Pantle v. Indus. Comm'n*, 61 Ill. 2d 365, 372 (1975). While waiver may be either express or implied, "[t]here must be both knowledge of the existence of the right and an intention to relinquish it." *Id.* (citing *First Lutheran Church v. Rooks Creek Evangelical Lutheran Church*, 316 Ill. 196 (1925); *Fey v. Walston & Co.*, 493 F.2d 1036 (7th Cir. 1974)). Here, while there is no direct evidence that Wells had any intention to relinquish his right to home-detention credit, it is especially important to note that there is no evidence that Wells even knew he had the right to this credit at all when he pleaded guilty and was sentenced. (See generally R. 54–62). To find waiver from such a silent record as this one risks reading the word "intentional" out of the long-standing definition of waiver.

To allow the implicit waiver of mandatory sentencing credit would be particularly dangerous, as it would raise double-jeopardy concerns in many cases. See *People v. Schieb*, 76 Ill. 2d. 244, 253 (1979) (citing *North Carolina v. Pearce*, 395 U.S. 711, 717–19 (1969),

overruled on other grounds by Alabama v. Smith, 490 U.S. 794, 794 (1989)). While Emanuel Wells did not receive such a sentence, one can easily imagine a defendant who is given the statutory maximum sentence for his offense, but found to have implicitly waived his credit for a year spent in pretrial home detention. Given that home-detention credit is mandatory, that defendant would serve a year in prison more than the legislature has mandated he could serve for that offense. See 730 ILCS 5/5-4.5-100(b) (requiring that a defendant "*shall* be given credit" for time served in home detention) (emphasis added). This would violate the constitutional prohibition against double jeopardy. See *Schieb*, 76 Ill. 2d at 253. The Fourth District's approach should be rejected, given how easily it would lead to constitutional violations.

At the very heart of this case is the question of who is trying to change the terms of Emanuel Wells's plea deal: Wells, by requesting credit that he did not write into his plea agreement as a defined term; or the lower courts, by reading a waiver of mandatory credit in to a plea agreement in which it does not appear. It is the latter. Mandatory credit can be bargained away (as in *Williams*), but there is no evidence that such a bargain occurred here. Wells retains his right to the 208 days of credit.

MOOTNESS

As a final consideration, Wells notes that this appeal is not moot, despite the fact that he has been released from prison. See Illinois Department of Corrections, *Individual in Custody Search*, https://idoc.illinois.gov/offender/inmatesearch.html (last visited on July 18, 2023), (App. at A-37–A-38); *People v. Young*, 355 Ill. App. 3d 317, 321 n.1 (2d Dist. 2005) (holding that a reviewing court may take judicial notice of information on the Illinois Department of Corrections's website). "An appeal becomes moot when an occurrence of events since the filing of the appeal makes it impossible for the reviewing court to provide effective relief." *People v. Montalvo*, 2016 IL App (2d) 140905, ¶ 14 (citing *People v. Jackson*, 199 Ill. 2d 286, 294 (2002)).

Here, while he has been released from prison, Wells is still serving a term of mandatory supervised release (MSR) and is projected to remain that way until August 4, 2024. See Illinois Department of Corrections, *Individual in Custody Search*, https://idoc.illinois.gov/offender/inmatesearch.html (last visited on July 18, 2023), (App. at A-37–A-38). A reduction in Wells's prison sentence—achieved through the grant of sentencing credit—would affect how long Wells could be reincarcerated for a violation of his MSR. *Jackson*, 199 Ill. 2d at 294 (citing 730 ILCS 5/3-3-9(a)(3)(i)(B) (1996)); accord *People v. Montgomery*, 2023 IL App (3d) 200389, ¶ 26 n.1 (citing *Jackson* and applying its mootness analysis to the current statute). Accordingly, Wells's challenge to the trial court's denial of his sentencing credit is not moot, as it was brought before he completed his MSR. *Montalvo*, 2016 IL App (2d) 140905, ¶ 14 (citing *People v. Elizalde*, 344 Ill. App. 3d 678, 681 (2d Dist. 2003), *overruled in part on other grounds by People v. Graves*, 235 Ill. 2d 244, 254–55 (2009)).

CONCLUSION

In summary, therefore, Emanuel Wells is entitled to 208 days of additional sentencing credit, as he spent that length of time in home detention, under GPS monitoring and a curfew. Wells's plea agreement, being silent as to this 208-day block of credit, did not include an affirmative waiver of the credit. *Malone*, 2023 IL App (3d) 210612, ¶ 20. He then asked the trial court—when that court had jurisdiction to grant his request—to credit him for the time he served on home detention, but the court denied his request. Ill. S. Ct. R. 472(a)(3); (C. 10–11, 133–35).

Now—while this Court may still grant him effective relief—Wells asks this Court to provide him the full 208 days of credit that he earned, and which he never affirmatively agreed to forego. *Montalvo*, 2016 IL App (2d) 140905, ¶ 14; *Malone*, 2023 IL App (3d) 210612, ¶ 20 (determining that the defendant's plea agreement did not waive the credit he earned through

substance-abuse programming, but remanding so that the trial court could determine how much programming the defendant had actually completed). This Court should award Wells an additional 208 days of presentence custody credit, as the record conclusively demonstrates that he was in credit-earning home detention for that period of time. (See *supra* Argument I-A). And in the alternative, should this Court find itself unable to determine from this record whether Wells intended to waive his statutory right to the credit, Wells respectfully requests that this Court remand the case to the trial court, with instructions to determine whether Wells intended to waive all credit for the time he spent in home detention. *Cf. Ford*, 2020 IL App (2d) 200252, ¶¶ 28–30. If this waiver happened, it happened outside the record on appeal, and a hearing is needed to confirm its existence. *Id.* But if it did not—as can be seen from the complete lack of evidence of its occurrence in this record—Emanuel Wells is statutorily entitled to the credit, and this Court should provide it to him.

CONCLUSION

For the foregoing reasons, Emanuel Wells, defendant-appellant, respectfully requests that this Court award him an additional 208 days of presentence credit for the time he spent in home detention. Should this Court find that the record is unclear as to whether Wells agreed to forego the credit to which he is entitled, Wells requests in the alternative that this Court remand the case to the trial court, with instructions to determine whether Wells's plea negotiations included a waiver of credit for the time he spent in home detention.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is twenty-eight pages.

/s/Gregory G. Peterson
GREGORY G. PETERSON
Assistant Appellate Defender

APPENDIX TO THE BRIEF

Emanuel Wells No. 129402

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
MCLEAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff/Petitioner

v.

EMANUEL WELLS
Defendant/Respondent

Reviewing Court No: 4-22-0552
Circuit Court/Agency No: 2020CF001103
Trial Judge/Hearing Officer: J. CASEY COSTIGAN

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ETJ NCA-DR

IN THE CIRCUIT COURT OF McLEAN COUNTY, IL
ELEVENTH JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF ILLINOIS)
)
vs.)
)
EMANUEL WELLS)
Defendant)

Date of Sentence 11-05-2021
Case Number 2020CF001103 M05358
Date of Birth 03/30/1990
(Defendant)

FILED
NOV 05 2021
McLEAN COUNTY
CIRCUIT CLERK

JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above-named defendant has been adjudged guilty of the offenses enumerated below; IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the term of years and months specified for each offense.

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
TWO	UNLAWFUL POSSESSION WITH THE INTENT TO DELIVER	10/11/20	720 ILCS 550/5.1A	X	6 Yrs. 0 Mos.	18 MONTHS

~~To run (concurrent with) (consecutively to) count(s) _____ and served at 50%, 75%, 85%, 100%~~ pursuant to 730 ILCS 5/3-6-3

_____ Yrs. _____ Mos. _____ Yrs.
To run (concurrent with) (consecutively to) count(s) _____ and served at 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3

_____ Yrs. _____ Mos. _____ Yrs.
To run (concurrent with) (consecutively to) count(s) _____ and served at 50%, 75%, 85%, 100% pursuant to 730 ILCS 5/3-6-3

This Court finds that the defendant is:

_____ Convicted of a Class _____ offense but sentenced as a Class X offender pursuant to 730 ILCS 5/5-4.5-95(b).

X The Court further finds that the defendant is entitled to receive credit for time actually served in custody (of 54 days as of the date of this order) from (specify dates) 10/11/20 TO 12/03/20. The defendant is also entitled to receive credit for the additional time served in custody from the date of this order until defendant is received at the Illinois Department of Corrections.

___ The defendant remained in continuous custody from the date of this order.

___ The defendant did not remain in continuous custody from the date of this order (less _____ days from a release date of _____ to a surrender date of _____).

_____ The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____ resulted in great bodily harm to the victim. [730 ILCS 5/3-6-3(a)(2)(iii)]

_____ The Court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program. [730 ILCS 5/5-4-1(a)]

_____ The Court further finds that offense was committed as a result of the use of, abuse of, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program. [730 ILCS 5/5-4-1(a)]

_____ The defendant successfully completed a full-time (60-day or longer) Pre-Trial Program ___ Educational/Vocational ___ Substance Abuse ___ Behavior Modification ___ Life Skills ___ Re-Entry Planning – provided by the county jail while held in pre-trial detention prior to this commitment and is eligible for sentence credit in accordance with 730 ILCS 5/3-6-3(a)(4). THEREFORE IT IS ORDERED that the defendant shall be awarded additional sentence credit as follows: total number of days in identified program(s) _____ x .50 = _____ days, if not previously awarded.

_____ The defendant passed the high school level test for General Education and Development (GED) on _____ while held in pre-trial detention prior to this commitment and is eligible to receive Pre-Trial GED Program Credit in accordance with 730 ILCS 5/3-6-3(a)(4.1). THEREFORE IT IS ORDERED that the defendant shall be awarded 60 days of additional sentence credit, if not previously awarded.

_____ IT IS FURTHER ORDERED the sentence(s) imposed on count(s) _____ be (concurrent with) (consecutive to) the sentence imposed in case number _____ in the Circuit Court of _____ County.

_____ IT IS FURTHER ORDERED that _____

The Clerk of the Court shall deliver a certified copy of this order to the sheriff. The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law.

This order is (X effective immediately) (_____ stayed until _____).

DATE: 11-05-2021 ENTER: _____

E-FILED
Transaction ID: 4-22-0552
File Date: 7/5/2022 11:49 AM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT McLEAN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS
VS.
EMANUEL WELLS

CASE NO: 2020 CF 1103
JUDGE: J. CASEY COSTIGAN

NOTICE OF APPEAL

Joining Prior Appeal / Separate Appeal / Cross Appeal
(circle one)

An Appeal is taken from the order or judgment described below:

1. Court to which Appeal is taken:
ILLINOIS APPELLATE COURT
FOURTH JUDICIAL DISTRICT
201 W. MONROE ST
SPRINGFIELD, IL 62704

Email: **N/A**

2. Name of Appellant and address to which Notices shall be sent:
EMANUEL WELLS M05358
4017 E. 2603 RD.
SHERIDAN, IL 60551

3. Name and address of appellant's attorney on appeal:
ILLINOIS APPELLATE DEFENDER
JAMES E. CHADD
400 WEST MONROE, SUITE 303
SPRINGFIELD, IL 62705-5240

Email: **4thDistrict@osad.state.il.us**

If appellant is indigent and has no attorney, does he want one appointed? **YES**

4. Date of order of judgment: **4/12/2022**

5. Offense of which convicted: **CT2: UNLAWFUL POSS. WITH THE INTENT TO DELIVER**

6. Sentence: **CT2: 6YRS IN IDOC**

7. If appeal is not from a conviction, nature of order appealed from: **CONVICTION, SENTENCE, & DENIAL OF ORDER FOR NUNC PRO TUNC**

8. If the appeal is from a judgment of a circuit court holding unconstitutional a statue of the United States or of this state, a copy of the court's findings made in compliance with Rule 18 shall be appended to the notice of appeal.

Don R. Everhart Jr.
Don R. Everhart, Jr., Circuit Clerk
Gabriela Lopez
Deputy

2023 IL App (4th) 220552-U

NO. 4-22-0552

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 18, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. EMANUEL WELLS, Defendant-Appellant.	) Appeal from the) Circuit Court of) McLean County) No. 20CF1103)) Honorable) J. Casey Costigan,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice DeArmond and Justice Doherty concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not commit error by denying defendant's motion seeking additional presentence credit for time spent in home detention.

¶ 2 After the trial court sentenced defendant Emanuel Wells pursuant to the terms of a fully negotiated plea agreement, which included a provision giving defendant credit against his sentence of incarceration for time spent in presentence custody, he filed a *pro se* motion seeking additional credit for time spent in home detention while released on bond. The court denied the motion. In this appeal, defendant asserts the court erred because (1) he is entitled by statute (730 ILCS 5/5-4.5-100(b) (West 2020)) to an additional presentence custody credit of 208 days and (2) he did not explicitly agree to waive the additional credit. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 21, 2020, in the circuit court of McLean County, a grand jury indicted defendant for unlawful possession of cannabis with the intent to deliver (720 ILCS 550/5(g) (West 2020)), in addition to several other offenses. On or about December 3, 2020, defendant posted bond. The orders setting the terms of defendant's release conditioned such release on "GPS Monitoring with 24 hour Home Confinement." The trial court advised defendant other than work, church, medical appointments, and emergencies, the conditions confined him to his home and subjected him to a curfew. Over a period of several months, the court increasingly relaxed the terms of defendant's release, permitting him to go to the gym, transport his child, seek employment, and work full-time. Eventually, the court eliminated the curfew and GPS monitoring.

¶ 5 On November 5, 2021, the parties presented the trial court with a fully negotiated written plea agreement, which defendant signed. The plea agreement provided in pertinent part (1) defendant would plead guilty to the charge of unlawful possession of cannabis with the intent to deliver, (2) the State would move to dismiss the other two counts of the indictment, (3) the court would impose an agreed sentence of 6 years' incarceration, and (4) defendant would receive credit for 54 days spent in presentence custody.

¶ 6 In open court, the trial court reviewed the terms of the plea with defendant, including those described above. Upon defendant's acknowledgement of the terms as recited, the court accepted defendant's plea. Thus, the court entered judgment consistent with the agreement of the parties, imposing a 6-year term of imprisonment with credit for 54 days spent in presentence custody. In addition, the court dismissed the other counts of the indictment pursuant to the State's motion.

¶ 7 On March 31, 2022, defendant filed a *pro se* motion seeking additional credit for 166 days spent on "GPS Monitoring" prior to the trial court's imposition of his sentence. On April

12, 2022, the court denied defendant's motion, noting he "was given the correct pretrial detention credit on this case."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant asserts, because he was subject to continuous GPS monitoring and could not leave his home without the trial court's authorization, he is entitled to presentence custody credit for that home detention pursuant to section 5-4.5-100(b) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-4.5-100(b) (West 2020)). In response to the State's claim that defendant is bound by the plea agreement providing for 54 days of credit, defendant also posits the record does not demonstrate he "agreed to forgo" the additional presentence custody credit. Thus, the threshold issue is whether defendant waived his right to the additional credit.

¶ 11 A. Standard of Review

¶ 12 We utilize a *de novo* standard of review when considering whether a defendant should receive presentence custody credit against his period of incarceration. *People v. Jones*, 2015 IL App (4th) 130711, ¶ 12.

¶ 13 B. A Fully Negotiated Guilty Plea Waives the Right to Presentence Custody Credit

¶ 14 The trial court sentenced defendant on November 5, 2021. As of July 1, 2021, the pertinent statutory section provides:

> "The trial court shall give credit to the defendant for time spent in home detention on the same sentencing terms as incarceration as provided in Section 5-8A-3 [of the Unified Code] (730 ILCS 5/5-8A-3 [(West 2020)]). Home detention for purposes of credit includes restrictions on liberty such as curfews restricting movement for 12 hours or more per day and electronic monitoring that restricts travel or

movement. Electronic monitoring is not required for home detention to be considered custodial for purposes of sentencing credit." 730 ILCS 5/5-4.5-100(b) (West 2020).

¶ 15 Our supreme court has long held plea agreements are governed in part by contract law principles, though with constitutionally based underpinnings reflecting concerns fundamentally different than those bearing on commercial contract disputes. *People v. Evans*, 174 Ill. 2d 320, 326 (1996). In *Evans*, which involved consolidated cases, both defendants had pleaded guilty pursuant to negotiated plea agreements providing the State would move to dismiss other charges and recommend particular sentences. *Id.* at 324. The trial courts accepted the agreements and sentenced the defendants in accordance with the negotiated dispositions, after which the defendants filed motions for reconsideration seeking to reduce their sentences. *Id.*

¶ 16 The supreme court noted the use of plea bargains is "vital to and highly desirable for our criminal justice system." *Id.* at 325. As such, the court held, "the defendants' efforts unilaterally to reduce their sentences while holding the State to its part of the bargain cannot be condoned." *Id.* at 327. Had the court held otherwise, it would have encouraged " 'gamesmanship of a most offensive nature.' " *Id.* Specifically, if a court were to permit a defendant to negotiate a favorable disposition, benefitting from the State's agreement to dismiss charges and agree to a lighter sentence than would be likely after trial or upon an open plea, and then receive a further reduction by "reneging on the agreement," the State would not be interested in negotiated agreements. *Id.* at 327-28. Such a result would be inconsistent with the policy of encouraging negotiated dispositions. *Id.* at 328.

¶ 17 The guilty plea and sentence are "material elements of the plea bargain." *Id.* at 332. Thus, if a trial court enters judgment pursuant to a negotiated guilty plea, and the defendant wishes

to challenge his sentence, he must move to withdraw the plea such that "the parties are returned to the *status quo*." *Id.* Because the defendants in *Evans* did not do so, they were "not entitled to a reduction of [their] negotiated sentences because they had been bargained for in [their] plea agreement[s]." *Id.* at 334.

¶ 18 We have reaffirmed the foregoing principles, and held they encompass negotiated plea agreements providing for presentence credit. See *People v. Williams*, 384 Ill. App. 3d 415, 417 (2008). There, the parties presented the trial court with an agreement providing for a stipulated bench trial and an "agreed sentence" including 24 months' probation, 60 days' county jail incarceration with no presentence credit, and other specific terms. *Id.* at 416. The defendant appealed from the judgment adopting the agreement, asserting he was entitled to credit for days he served in custody prior to sentencing. *Id.* We noted the version of section 5-4.5-100(b) of the Unified Code in effect at the time provided a defendant "shall be given credit" for time held in presentence custody. *Id.* (referring to 730 ILCS 5/5-8-7(b) (West 2006)). However, defendant "received benefits in this bargain." *Id.* at 417. Thus, we held a defendant can request presentence custody credit at any time, unless "he agreed to forego [*sic*] it as part of a plea or other sentencing agreement." *Id.*

¶ 19 Shortly thereafter, we clarified it "would be unfair" to permit a defendant to agree to a specific sentence and subsequently receive a reduction from the sentence to which the parties have agreed. *People v. Evans*, 391 Ill. App. 3d 470, 474 (2009). There, the plea agreement was "fully negotiated" because it provided for a specified amount of presentence custody credit. *Id.* at 473. After the trial court sentenced defendant in conformity with that agreement, the defendant filed a *pro se* motion seeking additional presentence credit, which the court denied "because it was a negotiated term of the plea agreement." *Id.* at 471-72. We again noted trial courts are "statutorily

mandated" to give credit for the period a defendant spends in presentence incarceration. *Id.* at 472. But, because the defendant "bargained for his sentence," which provided for the precise amount of presentence credit he would receive, we found "no reason to modify the terms of defendant's negotiated plea agreement." *Id.* at 474.

¶ 20 And finally, albeit in an order entered pursuant to Illinois Supreme Court Rule 23(e)(1) (eff. Jan. 1, 2021), we recently held "a defendant may not request presentence custody credit if he agreed to forego [*sic*] it as part of a plea agreement." *People v. Getty*, 2021 IL App (4th) 200215-U, ¶ 20. Therein, a written plea agreement, filed with the court, provided for an 11-year sentence of imprisonment, which was one year less than the maximum, and presentence credit for 0 days. *Id.* ¶ 5. At the plea hearing, the trial court engaged in a colloquy with the State and the defendant concerning the presentence credit calculation, which the defendant acknowledged. *Id.* ¶ 4. The trial court sentenced the defendant consistently with the terms of the plea agreement. *Id.* ¶¶ 4-6. Subsequently, after the court mistakenly modified the mittimus in response to a motion filed by the defendant awarding presentence credit, the defendant filed a motion seeking additional presentence credit. *Id.* ¶¶ 7-10. The court found because the defendant agreed to forgo his right to presentence credit pursuant to the plea agreement, he was not entitled to such credit. *Id.* ¶ 10.

¶ 21 We affirmed and rejected the defendant's contention because he was not specifically admonished about his right to presentence credit, or the consequences of waiving it, and as such, there was no affirmative waiver of the right. *Id.* ¶ 22. Notably, the defendant provided no authority for such proposition. *Id.* Because the record demonstrated defendant entered into a plea agreement providing for a reduced sentence of incarceration with no presentence credit, we found "sufficient evidence that he waived the credit." *Id.*

¶ 22 We now reaffirm the principle that a fully negotiated guilty plea constitutes a waiver of presentence custody credit not provided for in the plea agreement.

¶ 23 C. Defendant Waived Entitlement to Additional Presentence Credit

¶ 24 Defendant repeatedly posits he is entitled to the additional credit because the record does not demonstrate or even suggest he agreed to waive the credit for the time spent on home detention.

¶ 25 Defendant signed a fully negotiated plea agreement, which provided for (1) the dismissal of two charges, (2) an agreed period of imprisonment of 6 years, and (3) presentence credit of 54 days. The trial court reviewed the terms with defendant, and defendant acknowledged he understood the terms, including that the agreement provided for the specified custodial credit. The court then entered judgment reflecting all the terms of the plea agreement and dismissed the two remaining charges.

¶ 26 The scenario here fits squarely within the principles discussed above, to wit: (1) defendant entered into a fully negotiated plea agreement providing for a specified amount of presentence credit; (2) he received the benefit of an agreed sentence of 6 years, which was the minimum, having faced a sentencing range of 6 to 30 years; (3) he benefitted from the dismissal of the two remaining charges of the indictment; and (4) the trial court sentenced defendant pursuant to the terms of the agreement. In short, because defendant bargained for a disposition providing for a specified amount of presentence credit and other significant benefits, he waived the right to any additional credit. Defendant is not entitled to renege on the agreement and receive additional presentence credit.

¶ 27 D. Amendment of the Statute

¶ 28 Defendant also contends the recent amendment to section 5-4.5-100(b) of the Unified Code (730 ILCS 5/5-4.5-100(b) (West 2020)) makes it "more likely that the parties did not realize" he was entitled to additional credit, and thus buttresses his argument.

¶ 29 However, the section has provided since June 22, 2012, that the sentencing court "shall" award credit "for time spent in home detention." 730 ILCS 5/5-4.5-100(b) (West 2012). The section's predecessor as well provided the trial court "shall" award presentence credit. See, *e.g.*, *Williams*, 384 Ill. App. 3d at 416 (the court referred to the 2006 version, cited as 730 ILCS 5/5-8-7(b) (West 2006)). Thus, it is difficult to comprehend how the addition of language further defining home detention would cause defendant to be unaware he could be entitled to presentence credit or that it is subject to waiver. But more to the point, the foregoing mandatory language has long been subject to waiver by a fully negotiated guilty plea, and the recent addition of language clarifying what constitutes home detention does not change the analysis. And lastly, the new language does not alter the contractual nature of plea agreements. Defendant cannot reap the benefit of his bargain with the State and then turn to the trial court to further sweeten the deal.

¶ 30 We find defendant waived the right to any additional presentence credit. Having done so, we do not reach any of the other issues, including whether defendant qualified for presentence credit for the period he spent on home detention.

¶ 31 III. CONCLUSION

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

¶ 33 Affirmed.

ELEVENTH JUDICIAL CIRCUIT COURT
McLEAN COUNTY, ILLINOIS

People of the State of Illinois)
)
vs.)
)
EMANUEL WELLS)
Defendant

Case Number(s): 2020CF001103

Defendant's Date of Birth: 03-30-90

APPEARANCE BOND

The DEFENDANT has been charged with the offense(s) CANNABIS TRAFFICKING/MA/DEL CANNABIS GREATER 5,000 GRAMS POSSESS CANNABIS GREATER THAN 5,000 GRAMS, and bond for this offense has been set at: $ 125,000XX

☐ Cash ☒ XX 10% Cash ☐ Personal Recognizance with the **$35.00 bond fee** to be assessed as costs for a total due at release of: $12,535.00.

Therefore, in consideration of being released from custody, the DEFENDANT, and the BOND DEPOSITOR, if other than the defendant, agree:

1. The Defendant is indebted to the State of Illinois in the full amount of the appearance bond stated above.
2. That the DEFENDANT SHALL:
   A. Personally appear to answer charge(s) at the McLean County Law & Justice Center, Bloomington, IL on 01-05-21 at 0900 AM / PM, XX and appear as ordered by the Court, until discharged.
   B. Not violate any criminal statute of any jurisdiction.
   C. Not leave the State of Illinois without permission of the Court.
   D. Give written notice of change of address to the Circuit Clerk within 24 hours at P.O. Box 2420, Bloomington, IL 61702
   E. Other Conditions: GPS MONITORING/ SOURCE OF BAIL - VACATED

If the victim is a family member/household member as defined by 725 ILCS 5/112A-3(3):

☐ F. Refrain from contact or communication with _____ for a minimum period of 72 hours following the defendant's release from custody.

☐ G. Refrain from entering or remaining at residence for a minimum period of 72 hours following the defendant's release from custody.

NOTICE TO PERSON PROVIDING BOND MONEY IF OTHER THAN DEFENDANT (725 ICLS 5/110-7)

I hereby acknowledge that I have posted bond for the above named defendant. I further understand that if the defendant fails to comply with the conditions of this bond, that the Court shall enter an order declaring the bond to be forfeited and used to pay costs, attorney's fees, fines, child support obligations or other purposes authorized by the Court. I further understand upon disposition of the case, part or the entire bond may be used to pay fines, costs, fees, restitution, child support or other financial obligations of the defendant.

Print Depositor's Name Jones, Tiarra

Signature: Tiarra Jones

Date of Birth: 12/27/96

Address: 3637 W. Hedge Hill LN Apt 1

City, State, Zip: Peoria, IL 61615

ASSIGNMENT OF BOND BY THE DEFENDANT

I hereby authorize the return of the bond herein posted to the person shown above after all conditions of the bond have been met.

DEFENDANT'S SIGNATURE: Emanuel Wells

CERTIFICATE OF DEFENDANT

I, the Defendant, do hereby state that I know and understand the terms and conditions of this appearance bond as shown on the front and reverse of this form. I understand further that if at any time prior to the final disposition of the charge(s), I escape or am released on bond and fail to appear in Court when required, I thereby waive my right to confront witnesses against me; the trial or sentencing can proceed in my absence; I forfeit the security posted; judgment will be entered against me in the full amount of this bond, plus costs; a warrant may be issued in which additional bond may be required to be posted. I understand and accept the terms and conditions set forth above and on the reverse side of this appearance bond.

Print Defendant's Name EMMANUEL WELLS

Signature of DEFENDANT Emanuel Wells

Address: 2425 W Howett St

City, State, Zip: Peoria IL 61603

Signed and acknowledged before me and bond received by me this 01 day of DECEMBER 2020

11464 11665

Official Signature

CORRECTIONAL OFFICER SGT.

Official Capacity

WHITE: Court GREEN: SA Copy CANARY: Police Agency PINK: Defendant GOLD: Bond Depositor (if other than defendant)

APPLICATION OF BOND

When the person charged (the Defendant) has been discharged from all obligations in the case, the bond posted shall be distributed by the Circuit Clerk as follows:

A. When a 100% bond has been posted, the Clerk shall satisfy any and all financial obligations in the court file in which the bond was posted unless otherwise ordered by the Court. Any remaining balance shall be refunded to the Defendant or the Surety, unless the Court orders the refund be directed to some other person, or the balance be applied to costs in a different court file.

B. When a 10% bond has been posted, then 90% of the bond posted shall be disbursed by the Clerk to satisfy any and all financial obligations in the court file in which the bond was posted as outlined in 725 ILCS 5/110-7, unless otherwise ordered by the Court. The remaining 10% of the bond, but not less than $5.00, shall be retained as court costs. Pursuant to Administrative Order 2004-6, any remaining balance shall be first used to satisfy any child support obligations of the same defendant incurred in a different case, if any, with any remaining balance transferred to satisfy the fines, fees, court costs, restitution, public defender fees or other financial obligations of the same defendant in different cases. Any remaining balance shall be refunded to the Defendant or the Surety, unless the Court orders the refund be directed to some other person, entity or file.

C. Any real estate, stocks or securities that have been posted as bond shall be returned to the Defendant or to the Surety, and any lien on any real estate will be discharged, unless otherwise ordered by the Court.

AUTOMATIC BOND CREDIT FOR CERTAIN OFFENSES

A. If the defendant is incarcerated for a Category B offense as defined under 725 ILCS 5/102-7.2, the defendant shall be given credit in the amount of $30.00 per day for every day incarcerated and the monetary amount of the bond shall be automatically decreased in that amount.

Revised: December 2017

WHITE: Court GREEN: SA Copy CANARY: Police Agency PINK: Defendant GOLD: Bond Depositor (if other than defendant)

Date : 12/02/2020 01 :50 PM

Clerk of The Circuit Court
Eleventh Judicial Circuit
County of McLean
104 W Front St. Bloomington, IL 61701

BOND RECEIPT

Date Received : 12/02/2020 Batch Id : CR312022020 Effective Date: 12/02/2020 Receipt # : 1246630
Manual Receipt # :

Received From : Tiarra Jones, Surety
Defendant: WELLS, EMANUEL
Case Number : 2020CF001103

Booking # : 130260610
Citation # :

Bond Seq	Bond Type	Face Amount	Source	Check/CC#	Deposit Amount
1	BG	$ 125,000.00	CHECK	52818	$ 12,500.00

Total Deposited :$ 12,500.00

CAS

ELEVENTH JUDICIAL CIRCUIT COURT
McLean County, Illinois

THE PEOPLE OF THE STATE OF ILLINOIS

vs. Case Number: 2020CF1107

Emanuel Wells

ORDER FOR ELECTRONIC MONITORING

This case having come before this Court, and the defendant having appeared, and having been determined to be placed on Electronic Monitoring as a condition of release or as part of a sentence, is hereby ordered to be placed on the appropriate monitoring program booked up by CAM Systems and supervised by McLean County Court Services for the following period:
upon bail to as ordered by court

For **PRE-TRIAL SUPERVISION cases,** the defendant shall remain in custody of the McLean County Adult Detention Center until fitted with Electronic Monitoring device by CAM Systems.
Defendant to comply with and complete the following conditions.

- ☒ Pay the initial installation fee of $126 plus the weekly fee of $56 to CAM Systems
- ☐ GPS Monitoring with Exclusion Zones of _____ feet from the protected address(es) as a condition of Pretrial Supervision
- ☒ GPS Monitoring with 24 hour Home Confinement or Curfew set from _____ until ____ as a condition of Pretrial Supervision
- ☐ SCRAM Alcohol Monitoring as a condition of Pretrial Supervision
- ☐ SCRAM-X Alcohol Monitoring with 24 hour Home Confinement or Curfew set from ____ until ____ as a condition of Pretrial Supervision
- ☐ No contact with: _____

_____

- ☒ Comply with all the guidelines as indicated in the CAM Systems Electronic Monitoring Participation Agreement

For **POST CONVICTION cases**, the defendant shall contact CAM Systems (800) 208-3244 within _____ hours of entry of this order to set up Electronic Monitoring.
Defendant to comply with and complete the following conditions.

- ☐ Pay the initial installation fee of $_____ plus the weekly fee of $_____ to CAM Systems
- ☐ GPS Monitoring with Exclusion Zones of _____ feet from the protected address(es) as a condition of Probation or Conditional Discharge
- ☐ GPS Monitoring with 24 hour Home Confinement or Curfew set from _____ until ____ as a condition of Probation or Conditional Discharge
- ☐ SCRAM Alcohol Monitoring as a condition of Probation or Conditional Discharge
- ☐ SCRAM-X Alcohol Monitoring with 24 hour Home Confinement or Curfew set from _____ until _____ as a condition of Probation or Conditional Discharge.
- ☐ No contact with: _____

_____

- ☐ Comply with all the guidelines as indicated in the CAM Systems Electronic Monitoring Participation Agreement
- ☐ Submit to random urinalysis and/or alcohol testing as directed by Court Services.

Entered: 11/24/20

_____
Judge

Original—File Green—Defendant Canary—State Pink—Court Services Goldenrod—Public Defender

STATE OF ILLINOIS
COUNTY OF McLEAN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

People
Plaintiff/Petitioner,

vs

Emanuel Wells
Defendant/Respondent.

No. 20 CF 1103

ORDER

By agreement of the parties and Order of Court bond shall be modified; the prior conditions of E.P.S. and curfew are removed.
All other terms and conditions shall remain in effect
(WITHOUT OBJECTION BY PROBATION PTS)

Approved as to Form

ASA JEFFREY HORVE

DATE: 06/29/2021

Judge

Name
Attorney for
Address
City
Telephone

STATE OF ILLINOIS)
COUNTY OF McLEAN)

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT

THE PEOPLE OF THE
STATE OF ILLINOIS

vs

EMANUEL WELLS

McLEAN COUNTY
FILED
NOV 05 2021
CIRCUIT CLERK

No. 2020CF001103

PLEA AGREEMENT

The defendant and the State's Attorney hereby submit to the Court the following Plea Agreement which was reached pursuant to discussions initiated by them. The defendant consents to the Court's receiving evidence in aggravation and mitigation in advance of the tender of this plea. The Agreement is as follows:

1. Defendant agrees to plead guilty to COUNT TWO-CLASS X FELONY OFFENSE UNLAWFUL POSSESSION OF CANNABIS WITH THE INTENT TO DELIVER
2. State's Attorney agrees to nolle pros COUNT ONE, 3
AGREED
3. The court will impose as a ~~maximum~~ sentence in this case the following:
   a. $ 100,000.00 fine, plus court costs and fees as authorized by law, payable as follows:
   SEE FINANCIAL SENTENCING ORDER
   b. SIX (years)/~~months/days~~ imprisonment in IDOC, as follows:
   CREDIT 10/11/2020 TO 12/03/2020 (54 DAYS)
   c. Probation/Conditional Discharge/Court Supervision for _____ years/months with payment of court costs and fees no later than THREE (3) YEARS OF IDOC RELEASE.
   Payment of Restitution no later than _____, as follows:

PERSONS OWED	AMOUNT PAYABLE

   d. Additional conditions: _____
4. It is stipulated that the defendant's prior record is as follows:
2013CF0325=UUW BY A FELON=2 YRS IDOC; 2012 UUW=8 YRS
2011CF0617=UUW/NO FOID PROBATION DISPO (ALL PEORIA COUNTY)
5. The defendant does (~~not~~) waive presentence investigation and written report.

11/05/2021
Date

X Emanuel Wells
Defendant

State's Attorney

X
Defendant's Attorney

white: Court copy
yellow: State's Attorney
pink: Probation Office
gold: Defendant

C 115

WAIVER OR DEMAND OF JURY AND PLEA TO COMPLAINT

STATE OF ILLINOIS)
) SS.
COUNTY OF McLEAN)

IN THE CIRCUIT COURT 11TH JUDICIAL CIRCUIT
McLEAN COUNTY, ILLINOIS

FILED
NOV 05 2021
McLEAN COUNTY
CIRCUIT CLERK

The People of the State of Illinois)
)
VS.)
)
EMANUEL WELLS)
)

No. 2020CF001103
COUNT TWO
CLASS X FELONY OFFENSE
UNLAWFUL POSSESSION OF
CANNABIS WITH THE INTENT
TO DELIVER

The undersigned defendant in the above entitled cause, comes now in open court in HIS own proper person, acknowledges receipt of copy of complaint in due time, acknowledges admonition by the Court as to effect of this plea, for plea herein says that HE is guilty / ~~not guilty~~ in manner and form as charged in said complaint, and waives / ~~demands~~ a jury in said cause.

X Emanuel Wells

Date this 5TH day of NOVEMBER 20 21.

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

COUNTY OF McLEAN

THE PEOPLE OF THE STATE OF ILLLINOIS,	)	
Plaintiff	)	
vs.	)	CASE NO. 20 CF 1103
EMANUEL WELLS,	)	
Defendant.	)	

REPORT OF PROCEEDINGS of the PLEA/SENTENCING before the HONORABLE J. CASEY COSTIGAN on the 5th day of November, 2021.

APPEARANCES:

MR. JEFFREY HORVE,
Assistant State's Attorney
for the People of the State of Illinois.

MR. JERRY LUND,
Attorney for Defendant.

Ms. Diane M. Black, CSR
License No. 084-003667
104 W. Front St., Room 420
Bloomington, IL 61701

THE COURT: This is Cause No. 20 CF 1103, People vs. Emanuel Wells. State appears by Assistant State's Attorney, Jeff Horve. Defendant, Mr. Wells, appears in person along with counsel, Jerry Lund.

Mr. Wells, I'm going to go over a number of things here with you today to make sure we all agree as to what's going to happen. I also want to make sure you understand your rights before you plead guilty to anything. So, if I say something today that you do not understand or that you do not agree with, stop me and let me know so I can go over it in more detail with you. Okay. All right. Also, our court reporter is taking down everything we say. So, at the appropriate time, I will need you to answer out loud because she can't get down the shake of the head.

It's my understanding that you would be pleading guilty to Count 2 of the Bill of Indictment today that alleges that on or about the 11th day of October, 2020, you committed the offense of unlawful possession of cannabis with intent to deliver in that you knowingly and unlawfully possessed with the intent to deliver more than 5,000 grams of a substance containing cannabis. That is a Class X felony. Carries a sentencing range of a minimum of six years in the Department of Corrections, a maximum of thirty years in the Department of Corrections, up to a $25,000 fine. Any sentence

would be followed by 18 months of mandatory supervised release. It is a non-probationable offense, so the minimum sentence on this is six years in the Department of Corrections.

It's my understanding that you've reached an agreement today to where you would be pleading guilty to that charge. You would pay the fines and costs that are summarized in the financial sentencing order that I'm showing to you. There would be a $100,000 street value fine, sentenced to six years in the Department. You have credit for 54 days at this point in time. Your fines and costs would be taken care of within three years from your release from the Department. And, apparently, Count 1 would be dismissed.

Does that accurately state your agreement today?

MR. WELLS: Yes, sir.

MR. LUND: Judge, there's also a Count 3.

THE COURT: Thank you. Is that nolled?

MR. HORVE: If I could add, that was an oversight on my part. Thank you.

THE COURT: All right. So, Counts 1 and 3 would be dismissed. Does that accurately reflect your agreement?

MR. WELLS: Yes, sir.

THE COURT: All right. Go over some rights with you, make sure you understand your rights. Before I do

that, I will go ahead and advise you that if you are not a citizen of the United States, you are hereby advised that a conviction for the offense for which you are charged may have consequences of deportation, exclusion from admission to the United States, and/or denial of naturalization under the laws of the United States. You understand that; is that right?

MR. WELLS: Yes.

THE COURT: You understand that as a consequence of a conviction or plea of guilty, the sentence for any future convictions may be increased or there may be the higher possibility of the imposition of consecutive sentences. There may be registration requirements that may restrict where you may work, live or be present. And there may be an impact upon your ability to, among other things, retain and obtain housing in the public or private market, retain or obtain employment, retain or obtain a firearm, occupational license or a driver's license. You understand that?

MR. WELLS: Yes.

THE COURT: In this case, you are entitled to plead not guilty. You could require the State to prove you guilty beyond a reasonable doubt. You are also entitled to plead guilty as well. You understand that?

MR. WELLS: Yes, sir.

THE COURT: In this case, you are entitled to

a jury trial. A jury would be composed of 12 citizens selected by you, your attorney and the State's Attorney. They would be seated in the jury box. They would listen to the evidence, and they would determine whether the State has proven you guilty beyond a reasonable doubt. Their decision on your guilt must be unanimous. And you understand by pleading guilty today, you are waiving your right to a jury trial?

MR. WELLS: Yes, sir.

THE COURT: You are also entitled to a bench trial. At a bench trial, the Court listens to the evidence, and the Court determines whether the State has proven you guilty beyond a reasonable doubt. You understand by pleading guilty today, you waive your right to a bench trial?

MR. WELLS: Yes, sir.

THE COURT: At any trial, you would have the right to testify if you chose to do so. No one could force you to testify, and you would have the right to remain silent. You would have the right to call witnesses and the right to cross examine any witnesses the State may call. You would also have the right to an attorney to represent you. And if you could not afford an attorney, I'd appoint one to represent you. You understand by pleading guilty today, you waive those rights?

MR. WELLS: Yes.

THE COURT: Has anybody forced you to do this today?

MR. WELLS: No, sir.

THE COURT: Have any promises been made to you, other than what I have just gone over with you?

MR. WELLS: No, sir.

THE COURT: Factual basis.

MR. HORVE: On Sunday, October 11, 2020, Bloomington Police Department went and dealt with an individual, being this defendant, that had come into McLean County via American Airlines flight coming to the airport in Bloomington from California. The reason why they're brought there is because there was a checked bag that had a large amount of cannabis. Specifically, the bag that he had, had approximately 25 pounds or 11,702 grams of what was confirmed to be over 5,000 grams of a substance containing cannabis packaged for sale. The lab did confirm that.

THE COURT: Thank you. Mr. Lund, is there a stipulation as to a factual basis?

MR. LUND: Yes, Your Honor.

THE COURT: Thank you. Court will find a factual basis. Court will find that Mr. Wells understands the nature of the charges, possible penalties, his legal rights, and that he is voluntarily entering into the guilty plea today. Court will accept the agreement that has been tendered as the

judgment of the Court in this matter.

Mr. Wells, I do need to go over additional rights that you do have, and those are your appeal rights. Because you do have the right to appeal what we have done here today. Before you would take any appeal, you first need to file a motion to withdraw your guilty plea. That needs to be done within 30 days of today's date. In that motion, you need to state all the reasons why you would wish to withdraw your guilty plea. Any reason not stated would be barred or forfeited. If I allow you to withdraw your guilty plea, I would undo what we have done here today and set your case for trial. The charges that were dismissed would be reinstated at the State's request if I do that. If I denied your motion and you still wished to appeal, then within 30 days after that denial, you would need to file a written Notice of Appeal or ask that I direct the clerk of the court to file a Notice of Appeal on your behalf. You would be limited on your appeal to the issues raised in your motion to withdraw your guilty plea. If you cannot afford the cost of an attorney or the cost of a transcript for that appeal, they'd be provided to you free of cost.

Any questions on those rights?

MR. WELLS: No, sir.

THE COURT: Any questions on what we've done

here today?

MR. WELLS: No, sir.

THE COURT: We'll get you a copy of the paperwork here in just a second, and you'll be all set. Good luck with things.

(Hearing concluded.)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

McLEAN COUNTY, ILLINOIS

CERTIFICATE OF REPORTER

I, Diane M. Black, CSR #084-003667, an Official Court Reporter for the Circuit Court of McLean County, Eleventh Judicial Circuit of Illinois, reported in machine shorthand the proceedings had on the trial in the above-entitled cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the HONORABLE J. CASEY COSTIGAN.

Diane M. Black(Electronic Signature)
- Official Reporter -

Dated this 6th day
of July, 2022.

IN THE CIRCUIT COURT, 11th JUDICAL CIRCUIT
McLEAN COUNTY, ILLINOIS

Subject: Emanuel Wells B/M 03-30-90

Memo – Re: Prisoner's period spent in jail in connection with case No. 2020CF001103

Unlawful Possession with the Intent to Deliver

INTERVAL

11 - 05 - 21 to 12 - 14 - 21

10 - 11 - 20 to 12 - 03 - 20

Jon Sandage
Sheriff

By Records
12/10/2021

FILED
3/31/2022 11:34 AM
DONALD R. EVERHART, JR.
CLERK OF THE CIRCUIT COURT
MCLEAN COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF Mclean COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
Plaintiff,) NO: 2020CF001103
)
Vs.)
Emanuel Wells)
)
Defendant,)

MOTION FOR ORDER NUNC PRO TUNC

Now comes the defendant, Emanuel Wells pro se, and respectfully moves this Honorable Court to enter and issue an Order Nunc Pro Tunc, correcting the mittimus issued in the above captioned matter. Said Order will provide that the defendant receive credit for time served towards the sentence imposed by this Court. In support of this motion, the defendant states as follows:

1. The Defendant was sentenced to serve 6yrs by Judge Costigan on 11-05-21.

2. The mittimus issued by the Court at the time of sentencing failed to correctly reflect the time defendant had spent in custody prior to being sentenced. (a copy of the mittimus is attached hereto and made a part by reference)

3. 730 ILCS 5/5-4.5-100 provides "the offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for time spent in custody as a result of the offense for which the sentence was imposed, at the rate specified in Section 3-6-3".

4. Pursuant to the above cited statute, the defendant is entitled to 166 days credit as time served in this case. 12-3-20 / 6-16-21

WHEREFORE, this defendant moves the court issue an order Nunc Pro Tunc, correcting the defendant's mittimus to reflect credit for all time served against this sentence. Specifically that said order indicate that this defendant receive credit for 166 days spent in the GPS Monitoring County Jail prior to sentencing.

Respectfully Submitted,

Defendant, pro se.

Date: 09/06/2022 14:17

RECORD SHEET

Number of records: 99

Case Number: 2020CF001103

2020CF001103

Date	Reporter	Judge	Description
03/31/2022			Motion for Order Nunc Pro Tunc with Proof/Certificate of Service received from Defendant 3/30/2022 and forwarded to Judge Costigan.
04/12/2022		COSTIGAN, J.	Defendants motion for Order Nunc Pro Tunc denied. Defendant was given the correct pretrial detention credit on this case. Clerk to send copy of docket to defendant and state.
04/14/2022			Copy of Motion for Order Nunc Pro Tunc and record sheet page 6 sent to Defendant. Copy of Motion for Order Nunc Pro Tunc and Judge's entry sent to SAO electronically.
05/09/2022			EFILE DOCKETING - Defendant's Notice of Appeal with Proof/Certificate of Service efiled.
05/09/2022			Notice of Appeal with Proof/Certificate of Service received from Defendant and forwarded to Judge Costigan.
06/29/2022		COSTIGAN, J.	Defendant's NOA requests appointment of appellate defender-granted; appellate defender appointed.
07/05/2022			EFILE DOCKETING - Prepared Notice of Appeal efiled
07/05/2022			Prepared Notice of Appeal efiled to the Appellate Court. Copies of NOA sent to Judge Costigan, State's Attorney, Attorney General, Appellate Defender, Defendant, Court Reporters Banks, Black, Doerr, Geshwilm, Jennings, Stevens, & Wahls.
07/05/2022			EFILE DOCKETING - Correspondence from Appellate Court efiled
07/06/2022			Report of proceedings filed (Black 11/5/21)
07/07/2022			Report of proceedings filed (Banks 10/30/20)
07/07/2022			EFILE DOCKETING - Correspondence from Appellate Defender efiled
07/12/2022			EFILE DOCKETING - Appellate Court Docketing statement efiled
07/15/2022			Report of proceedings filed (Jennings 8/30/21)
07/15/2022			EFILE DOCKETING - Appellate Court Order efiled
07/18/2022			Report of proceedings filed (Wahls 5/4/21)
08/17/2022			Report of proceedings filed (Geshwilm 11/24/20, 01/05/21, and 06/29/21)

ILLINOIS DEPARTMENT OF CORRECTIONS
INTERNET INMATE STATUS

AS OF: Tuesday, July 18, 2023


M05358 - WELLS, EMANUEL

Parent Institution: SHERIDAN CORRECTIONAL CENTER
Offender Status: PAROLE
Location: PAROLE DISTRICT 2

PHYSICAL PROFILE

Date of Birth: 03/30/1990
Weight: 190 bs.
Hair: Black
Sex: Male
Height: 5 ft. 07 in.
Race: Black
Eyes: Blue

MARKS, SCARS, & TATTOOS

TATTOO, WRIST, LEFT - Flames
TATTOO, WRIST, RIGHT - Flames
TATTOO, FOREARM, LEFT - Skeleton, Team, Kings, name and
TATTOO, HAND, RIGHT - HOT
TATTOO, FOREARM, LEFT - SLEEVE

ADMISSION / RELEASE / DISCHARGE INFO

Admission Date: 12/14/2021
Parole Date: 02/03/2023
Projected Discharge Date: 08/04/2024

SENTENCING INFORMATION

MITTIMUS:	20CF001103
CLASS:	X
COUNT:	1
OFFENSE:	CANNABIS TRAFFICKING
CUSTODY DATE:	09/12/2021
SENTENCE:	6 Years 0 Months 0 Days
COUNTY:	MCLEAN
SENTENCE DISCHARGED?:	NO
MITTIMUS:	13CF325
CLASS:	3
COUNT:	1
OFFENSE:	FELON POSS/USE WEAPON/FIREARM
CUSTODY DATE:	04/07/2013
SENTENCE:	2 Years 0 Months 0 Days
COUNTY:	PEORIA
SENTENCE DISCHARGED?:	YES

MITTIMUS:	12CF151
CLASS:	3
COUNT:	1
OFFENSE:	FELON POSS/USE WEAPON/FIREARM
CUSTODY DATE:	04/07/2013
SENTENCE:	8 Years 0 Months 0 Days
COUNTY:	PEORIA
SENTENCE DISCHARGED?:	YES
MITTIMUS:	09CF202
CLASS:	3
COUNT:	1
OFFENSE:	ATTEMPT BURGLARY
CUSTODY DATE:	03/18/2009
SENTENCE:	2 Years 0 Months 0 Days
COUNTY:	PEORIA
SENTENCE DISCHARGED?:	YES

conduct another search
return to the IDOC homepage

Illinois Department of Corrections
1301 Concordia Court, PO Box 19277
Springfield, Illinois, 62794-9277
217-558-2200 | 800-546-0844 TDD

2021 IL App (4th) 200215-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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).
Appellate Court of Illinois, Fourth District.

The PEOPLE of the State of Illinois, Plaintiff-Appellee,
v.
Quentin Jordan GETTY, Defendant-Appellant.

NO. 4-20-0215

FILED December 6, 2021

Appeal from the Circuit Court of McLean County, No. 13CF387, Honorable John Casey Costigan, Judge Presiding.

ORDER

JUSTICE HARRIS delivered the judgment of the court.

***1** ¶ 1 *Held*: The appellate court affirmed, holding that the trial court did not err in failing to amend the judgment order to reflect that defendant was entitled to additional presentence custody credit because defendant agreed to forego this credit pursuant to a fully negotiated plea agreement.

¶ 2 Defendant, Quentin Jordan Getty, appeals the denial of his "Motion to Correct Fines and Fees Order, and to Correct Mittimus, Pursuant to Illinois Supreme Court Rule 472." Defendant argues the trial court erred in failing to enter an amended judgment order reflecting that he was entitled to additional days of presentence custody credit. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In the instant case, defendant was charged with five counts of child pornography (720 ILCS 5/11-20.1(a)(2), (a)(6), (a)(7) (West 2012)) and four counts of aggravated criminal sexual abuse (*id.* § 11-1.60(d)). On April 2, 2015, defendant entered a plea agreement in which he pled guilty to one count of aggravated criminal sexual abuse in exchange for a sentence of 11 years' imprisonment. The sentence was to run consecutive to a nine-year sentence that the trial court had imposed in McLean County case No. 12-CF-1153 for the offense of home invasion. The sentence was to run concurrent with sentences that had been imposed in McLean County case Nos. 13-CF-309 and 13-CF-313. After admonishing defendant and hearing a factual basis for the plea, the court accepted defendant's plea. The following exchange occurred:

"THE COURT: [Defendant], one thing we didn't openly talk about here is your credit against this sentence, and I want to make sure you understand how that works. On paper you're given credit for the time you've been in jail on this charge since March 22nd of 2013 through January 24th of 2014.

MR. GHRIST [(ASSISTANT STATE'S ATTORNEY)]: Originally that was the in-date on the home invasion.

THE COURT: Okay. So he's actually been in custody longer?

MR. GHRIST: Yes.

THE COURT: You've been in custody on this charge since March 22nd of 2013. Normally you would get credit against this sentence from that day forward all the way through yesterday's date. However, because these sentences are being ordered consecutive to the home invasion charge you are only entitled to credit against that aggregate sentence, the 20 years, one time, and that period is already being credited against the armed violence. So I can't credit it, and the Department [of Corrections (DOC)] won't credit it against this sentence. Essentially, you still get credit for it in the long run, the big picture, because you get credit off of 20 years for every day you spend, you just don't get credit twice; do you understand that?

THE DEFENDANT: Yes, sir.

MR. GHRIST: If I could just add for the record, initially when we were discussing this agreement we were mistakenly counting the numbers with that credit being attached. When we realized that, that's why we changed it from 12 to 11 in fairness to account for that.

MR. BUKALSKI [(ASSISTANT PUBLIC DEFENDER)]: That's correct, Your Honor.

2** THE COURT: Okay. So the Court has now entered a written judgment order that sentences the defendant in accordance with the terms of this agreement."

¶ 5 The day of the plea hearing, a document titled "Plea Agreement" was filed. The document originally stated the court would impose a maximum sentence of 12 years' imprisonment. However, the number "2" from the "12" was crossed out, and the number "1" had been written in, such that the document stated the court would impose a maximum sentence of 11 years' imprisonment. The document stated defendant would receive credit for zero days served. The document had originally stated defendant would receive credit for 309 days, but "309" was crossed out and "0" was inserted in its place.

¶ 6 That same day, a written judgment order, which was a form order, was entered. The judgment order stated that defendant was sentenced to 11 years' imprisonment. A different number, which is indecipherable, had originally been written next to "11" but was crossed out. Originally, a box had been checked on the written judgment order next to a provision for presentence custody credit, and the order had stated defendant would receive credit for 309 days served in custody from March 22, 2013, through January 24, 2014. However, the check mark next to this provision and the number "309" were crossed out. The order also indicated defendant would be required to serve 85% of his sentence.

¶ 7 On January 25, 2018, defendant, *pro se*, filed a motion for a corrected mittimus reflecting that he was required to serve 50% of his sentence rather than 85%. The trial court entered a new judgment order stating defendant was required to serve only 50% of his sentence. On the new judgment order, the court checked the box next to the provision for presentence custody credit and indicated defendant was entitled to credit for days served in presentence custody from March 22, 2013, through January 24, 2014.

¶ 8 On February 13, 2018, defendant filed a motion for an order *nunc pro tunc*. Defendant requested additional credit for days he spent in custody from the time he was sentenced in McLean County case No. 12-CF-1153 on January 24, 2014, through April 2, 2015. Defendant attached a copy of the judgment order from McLean County case No. 12-CF-1153, which indicated that he had been convicted of home invasion, sentenced to nine years' imprisonment, and given presentence custody credit for the periods of November 1 through 14, 2012, and March 27, 2013, through January 23, 2014. Defendant also attached a handwritten letter detailing the days he spent in presentence custody.

¶ 9 On May 18, 2018, the trial court entered an order granting the motion in part and denying it in part. The court stated it did not review any documents or transcripts other than the original judgment order when it previously entered an amended judgment order. The court subsequently reviewed the record more closely, including reviewing a transcript of the guilty plea hearing.

¶ 10 The trial court found defendant want not entitled to presentence custody credit because he had agreed to forego it pursuant to the plea agreement. The court stated the record showed the plea agreement was originally 12 years' imprisonment with credit for time served, but the parties agreed to change it to 11 years' imprisonment with no credit for time served. This was based on the realization that defendant had already received presentence custody credit against his sentence in McLean County case No. 12-CF-1153 and would not receive additional credit in the instant case.

***3** ¶ 11 The trial court found that even if the parties had not negotiated away the presentence custody credit, the manner in which consecutive sentences were calculated under Illinois law would support the court's finding that defendant was not entitled to credit for the period from March 22, 2013, through April 2, 2015. The court stated that, in McLean County case No. 12-CF-1153, defendant had received presentence custody credit for the period of March 27, 2013, through January 23, 2014, and he had begun serving his prison sentence on January 24, 2014. The court found that if defendant were to receive any credit for those periods in the instant case, he would be receiving impermissible double credit.

¶ 12 However, the trial court proceeded to award defendant credit for time served in custody from March 22, 2013, through March 26, 2013. The court found that this was consistent with the plea agreement because defendant was not in custody in relation to McLean County case No. 12-CF-1153 during that time. The court reasoned that defendant's waiver of presentencing custody credit was centered on the fact that he was not entitled to double credit.

¶ 13 Defendant appealed, and his appeal was dismissed on his own motion.

¶ 14 On January 21, 2020, defendant, *pro se*, filed a "Motion for Corrected Mittimus" requesting that the court change the wording on the mittimus concerning the age of the victim and award him additional presentence custody credit for completing a life skills program in the county jail.

¶ 15 That same day, defendant, *pro se*, filed a "Motion to Correct Fines and Fees Order, and to Correct Mittimus, Pursuant to Illinois Supreme Court Rule 472," which is the subject of the instant appeal. Defendant requested that the court amend the judgment order to reflect that he was in presentence custody from March 22, 2013, through April 2, 2015. (We note that, on appeal, defendant asserts that the date "April 2, 2015" was a scrivener's error, and he is only seeking credit through April 1, 2015.) In the motion, defendant asserted that when he appealed the trial court's order denying in part his prior motion to amend the mittimus, appellate counsel informed him that the judgment order should reflect all the days he was in presentence custody, even the days he was in the custody of the DOC serving sentences in other cases. Defendant asserted that appellate counsel contacted the records department of the DOC facility where he was housed and confirmed that the DOC would not consider overlapping custody dates when calculating his parole date. Defendant asserted he would not receive any double credit, and the DOC preferred that all days spent in presentence custody were listed on the judgment order. Defendant also requested that he receive *per diem* credit toward his applicable fines.

¶ 16 On April 29, 2020, the trial court denied defendant's "Motion for Corrected Mittimus." The court also denied defendant's "Motion to Correct Fines and Fees Order, and to Correct Mittimus, Pursuant to Illinois Supreme Court Rule 472." The court stated it had reviewed McLean County case Nos. 12-CF-1153, 13-CF-509, and 13-CF-313, and defendant was awarded the correct amount of presentence custody credit without receiving double credit. The court also found defendant was not entitled to credit against his fines due to the nature of the offense. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant argues the trial court erred in failing to amend the judgment order *nunc pro tunc* to reflect sentence credit for the time he spent in presentence custody from March 22, 2013, through April 1, 2015. Defendant contends that an amended judgment order would not result in him receiving any additional presentence custody credit but would prevent any future confusion or errors in calculating his sentence.

***4** ¶ 19 In support of his argument on appeal, defendant relies heavily on a conversation his appellate counsel allegedly had with an unnamed employee at the records department of defendant's prison. The employee allegedly told counsel the judgment order should reflect all the days defendant spend in presentence custody on this case, and the DOC would not award any double credit if the same days of presentence custody were reflected in multiple sentencing orders. The State contends that the conversation between counsel and the employee is not part of the record and should not be considered by this court. Even if we were to accept defendant's representation that he would not receive double credit from the DOC if the judgment order were amended, defendant would not be entitled to relief because he agreed to give up the credit in order to receive a lesser sentence.

¶ 20 Generally, a criminal defendant is entitled to credit against his sentence for the number of days spent in custody prior to sentencing as a result of the offense. 730 ILCS 5/5-4.5-100(b) (West 2018). However, a defendant may not request presentence custody credit if he agreed to forego it as part of a plea agreement. *People v. Evans*, 391 Ill. App. 3d 470, 473 (2009).

¶ 21 Here, the record shows defendant pled guilty to aggravated sexual abuse in exchange for a sentence of 11 years' imprisonment with no presentence custody credit. At the plea hearing, the parties indicated they had originally agreed to a sentence of 12 years' imprisonment, contemplating that defendant would receive presentence custody credit for the period of March 22, 2013, through January 24, 2014. They agreed to lower the sentence to 11 years' imprisonment upon realizing defendant had already received the credit in McLean County case No. 12-CF-1153 and would not receive additional credit in the instant case. Consistent with the representations of the parties at the plea hearing, the sentence was changed to 11 years' imprisonment on both the "Plea Agreement" document and written judgment order, and the provisions for presentence custody credit were crossed out on both documents. Because defendant agreed to receive no presentence custody credit in this case under the terms of the plea agreement, the trial court did not err in declining to amend the mittimus.

¶ 22 We reject defendant's argument that he did not waive his right to presentence custody credit. "Waiver *** 'is an intentional relinquishment or abandonment of a known right or privilege.' " *People v. Sophanavong*, 2020 IL 124337, ¶ 20 (quoting *People v. Lesley*, 2018 IL 122100, ¶ 36). Defendant contends the record does not contain an affirmative waiver because he was not admonished on the record about

his right to presentence credit or the consequences waiving it would entail. However, defendant cites no authority for the proposition that such admonishments were required. The record shows defendant entered into a plea agreement in which he received no presentence custody credit but instead received a reduced sentence of 11 years' imprisonment. This constitutes sufficient evidence that he waived the credit.

¶ 23 III. CONCLUSION

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

¶ 25 Affirmed.

Presiding Justice Knecht and Justice Cavanagh concurred in the judgment.

All Citations

Not Reported in N.E. Rptr., 2021 IL App (4th) 200215-U, 2021 WL 5822731

No. 129402

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- EMANUEL WELLS, Petitioner-Appellant.	)	Appeal from the Appellate Court of Illinois, No. 4-22-0552. There on appeal from the Circuit Court of the Eleventh Judicial Circuit, McLean County, Illinois, No. 20-CF-1103. Honorable J. Casey Costigan, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Mr. Kwame Raoul, Attorney General, Attorney General's Office, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Don Knapp, McLean County State's Attorney, 104 W. Front St., Room 605, Bloomington, IL 61701-2400, stateattny@mcleancountyil.gov;

Mr. Emanuel Wells, 2425 W. Howett, Peoria, IL 61605

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On July 28, 2023, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Rachel A. Davis
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