

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).

2026 IL App (4th) 251300-U
NOS. 4-25-1300, 4-25-1302 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 1, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
DANIEL ALLEN COOK,	)	No. 18CF835
Defendant-Appellant.	)	23CF184
	)	
	)	Honorable
	)	Amy L. McFarland,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Zenoff and Doherty concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court failed to exercise its discretion under section 5-6-4(h) of the Unified Code of Corrections (730 ILCS 5/5-6-4(h) (West 2024)) when determining whether to award defendant sentence credit for time spent on probation based on the erroneous belief that the statute did not apply.

¶ 2 In McLean County case No. 18-CF-835, defendant, Daniel Allen Cook, pleaded guilty to aggravated driving under the influence (DUI) (625 ILCS 5/11-501(d)(2)(C) (West 2018)) and was sentenced to 48 months' probation. While on probation, he was charged with other offenses, including driving while his driver's license was revoked (DWLR) (625 ILCS 5/6-303(d-3) (West 2022)) in McLean County case No. 23-CF-184. Ultimately, defendant admitted violating his probation in case No. 18-CF-835, his probation was revoked, and he was resentenced to five years in prison. He also pleaded guilty to DWLR in case No. 23-CF-184 and was sentenced to a concurrent term of two years in prison. Defendant appeals, arguing the trial court erred by failing

to exercise its discretion under section 5-6-4(h) of the Unified Code of Corrections (Code) (730 ILCS 5/5-6-4(h) (West 2024)) when determining whether he was entitled to sentence credit for any of the time he spent on probation. We remand with directions.

¶ 3

I. BACKGROUND

¶ 4

In August 2018, in case No. 18-CF-835, a grand jury indicted defendant on two counts of aggravated DUI (625 ILCS 5/11-501(d)(2)(C) (West 2018)), one count of DWLR (*id.* § 6-303(d-3)), and one count of possession of a controlled substance (720 ILCS 570/402(c) (West 2018)). In May 2019, defendant pleaded guilty to one count of aggravated DUI, and the trial court sentenced him to “48 months of drug court probation.” In December 2022, while still on probation, defendant was cited for DWLR and other traffic-related offenses. As a result, the State filed a petition to revoke defendant’s probation in case No. 18-CF-835 and brought a felony DWLR charge (625 ILCS 5/6-303(d-3) (West 2022)) against defendant in case No. 23-CF-184.

¶ 5

In February 2025, defendant entered into an open plea agreement with the State, pursuant to which he admitted to violating his probation and pleaded guilty to DWLR. In May 2025, the trial court resentenced defendant to five years in prison for aggravated DUI in case No. 18-CF-835 and imposed a concurrent term of two years in prison for DWLR in case No. 23-CF-184.

¶ 6

In June 2025, defendant filed a motion to reconsider his sentence, arguing both of his sentences were excessive. In July 2025, he *pro se* filed a motion to amend the mittimus pursuant to Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024). Defendant asserted there were several bases upon which he should be granted additional sentence credit. Relevant to this appeal, defendant cited section 5-6-4(h) of the Code (730 ILCS 5/5-6-4(h) (West 2024)) and asked the trial court to grant him sentence credit for the time he spent on probation, “totaling 5.5 [plus] years.” In

September 2025, the State filed an objection to defendant's motion to amend the mittimus, arguing defendant's request for credit for time spent on probation and "not the actual days spent in custody" was "not authorized by statute." The same month, defendant's counsel filed a motion to supplement defendant's *pro se* motion to amend the mittimus, presenting additional argument in support of defendant's *pro se* claims.

¶ 7 In October 2025, the trial court conducted a hearing on both defendant's motion to amend the mittimus and his motion to reconsider his sentences. At the outset of the hearing, defendant's counsel stated that he adopted defendant's *pro se* motion. In presenting argument on the motion, counsel emphasized language in section 5-6-4(h) of the Code that a defendant was not entitled to sentence credit for a term of probation "unless the court orders otherwise." *Id.* In response, the State argued as follows:

"I guess that statute on the surface I think reads into it the court's discretion to give [defendant] credit. But I think if you read that in full, interpretation [sic] a statute in full, the very next sentence goes on to say that the court's ability to do that is confined to the time he was in custody pretrial. So if the court finds that the court does have the discretion, we would ask that that be denied as it goes against the spirit of what the statute is, is that credit for time in confinement."

¶ 8 The record shows the trial court took both defendant's motion to amend the mittimus and his motion to reconsider his sentences under advisement. On December 2, 2025, the court conducted a hearing and issued its rulings, denying both motions. Initially, it addressed defendant's motion to amend the mittimus and, relevant to this appeal, held as follows:

"So, it seems that we get to the heart, really, of defendant's argument: Credit for the time he was on probation, in excess of five years; and ultimately, when there

is a revocation of probation, the Court—the defendant in essence starts again, from a sentencing standpoint, unless the Court orders otherwise. If there were a period of periodic imprisonment, or a partial—partial term credited to that, the Court would take that into consideration as part of its calculation.

So, here, the defendant is asking for days where he wasn't actually in custody, but actually on probation, and the Court does not find that the statute applies in that situation. That's not—and I understand that not—as not an attorney, that—that there are cases out there and things that would, on the surface, maybe seem to apply, but the law is a little bit more complex than that, and—and it requires certain analysis and application. And so, again, when the Court looks at the statutes, when there is a revocation of probation, the Court has to take into account if it's defendant's third offense of imprisonment, periodic or otherwise.

And so, for all of those reasons, the defendant's motion to amend mittimus is denied."

¶ 9 These appeals followed and were consolidated on review.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the trial court erred in finding that section 5-6-4(h) of the Code (*id.*) did not apply to him and denying his request for sentence credit as a result. He contends that when a defendant is resentenced after the revocation of probation, section 5-6-4(h) gives a sentencing court the discretion to grant sentence credit for time spent on probation. Defendant maintains that, in his case, the court failed to exercise its discretion and, instead, erroneously found section 5-6-4(h) was inapplicable to the circumstances of his case. He asks that we remand the matter for a new hearing on his postsentencing motion, brought pursuant to Rule

472, so that the court may exercise its discretion and determine whether to award him sentence credit for the time he was on probation.

¶ 12 In response, the State acknowledges that the trial court had discretion to grant defendant sentence credit for his term of “non-custodial probation.” It maintains, however, that the court’s remarks in denying defendant credit, “though inartful,” clearly showed an exercise of its discretion. Alternatively, the State concedes that, upon a determination that the court did not exercise its discretion, “the proper remedy is *** a limited remand for the *** court to consider whether to exercise its discretion to award defendant credit for time spent on probation.”

¶ 13 Illinois Supreme Court Rule 472(a)(3) (eff. Feb. 1, 2024) provides that, in criminal cases, the trial court retains jurisdiction to correct sentencing errors at any time following judgment, including “[e]rrors in calculation of presentence custody credit.” Additionally, section 5-6-4(h) of the Code applies when a defendant is being resentenced after the revocation of probation, conditional discharge, supervision, or a sentence of county impact incarceration. 730 ILCS 5/5-6-4(h) (West 2024). It states as follows:

“The term on probation, conditional discharge or supervision shall not be credited by the court against a sentence of imprisonment or periodic imprisonment *unless the court orders otherwise*. The amount of credit to be applied against a sentence of imprisonment or periodic imprisonment when the defendant served a term or partial term of periodic imprisonment shall be calculated upon the basis of the actual days spent in confinement rather than the duration of the term.” (Emphasis added.) *Id.*

¶ 14 Under section 5-6-4(h), “the trial court has broad discretion in choosing to grant or refuse credit for time served on probation.” *People v. Bogan*, 185 Ill. App. 3d 129, 136 (1989).

Also, credit for time spent on probation is not automatic under the statute. *People v. Sweeney*, 2012 IL App (3d) 100781, ¶ 38. When the trial court makes no comment about such credit, the defendant does not receive it. *Id.* ¶ 40. On review, the trial court’s determination of whether to award credit to a defendant for time spent on probation will not be disturbed absent an abuse of discretion. *Bogan*, 185 Ill. App. 3d at 136; *Sweeney*, 2012 IL App (3d) 100781, ¶ 40 (same).

¶ 15 Notably, though, “[a] trial court commits error when it refuses to exercise discretion based on the erroneous belief it does not have discretion.” *People v. Pinkston*, 2013 IL App (4th) 111147, ¶ 14; *People v. Queen*, 56 Ill. 2d 560, 565 (1974) (“There is error when a trial court refuses to exercise discretion in the erroneous belief that it has no discretion as to the question presented.”). In such cases, “remand for the limited purpose of allowing the trial court to exercise its discretion” may be appropriate. *Pinkston*, 2013 IL App (4th) 111147, ¶ 20.

¶ 16 Here, we agree with the defendant and find the trial court’s comments indicate that it did not exercise its discretion when denying defendant’s request for sentence credit under section 5-6-4(h) of the Code. Rather, the court’s remarks reflect a belief that section 5-6-4(h) was inapplicable to defendant because he was asking for credit for days when he was on probation but not “in custody.”

¶ 17 When setting forth its oral ruling on defendant’s motion to amend the mittimus, the trial court first noted that defendant was requesting credit for the time he spent on probation “in excess of five years.” Although the court next referenced the statutory language that grants it the discretionary authority to award sentence credit for time on probation, *i.e.*, that a term of probation shall not be credited “unless the court orders otherwise” (730 ILCS 5/5-6-4(h) (West 2024)), it then immediately suggested that it would only consider periods that defendant spent “actually in custody,” stating as follows:

“If there were a period of periodic imprisonment, or a partial—partial term credited to that, the Court would take that into consideration as part of its calculation.

So, here, the defendant is asking for days where he wasn’t actually in custody, but actually on probation, and the Court does not find that the statute applies in that situation.”

The court’s comments suggest a finding that section 5-6-4(h) did not permit credit to be granted for periods that defendant was on probation but not in custody.

¶ 18 Additionally, we note that such a finding by the trial court appears to be consistent with the State’s arguments in responding to defendant’s request for credit. First, in its written response to defendant’s motion to amend the mittimus, the State argued that defendant’s request for credit for the duration of his probation term and “not the actual days spent in custody” was “not authorized by statute” or “not authorized by law.” Second, the State raised a similar contention at the hearing on defendant’s motion, suggesting that, although “on the surface,” section 5-6-4(h) allowed the court the discretion to grant credit, consideration of the statute “in full” showed “that the court’s ability [to grant credit was] confined to the time [defendant] was in custody pretrial.” The court’s remarks in denying defendant’s request for credit reflect an acceptance of the State’s argument and, consequently, an erroneous interpretation of section 5-6-4(h).

¶ 19 In arguing that the trial court exercised its discretion below, the State asserts that the court “justified its ruling” by referring “to defendant’s extensive criminal history and his multiple failures to comply with the terms of [his] probation.” However, the record fails to reflect that the court made any specific findings or references to defendant’s particular circumstances when denying his request for credit under section 5-6-4(h).

¶ 20 That State also argues that the trial court’s remarks suggest that it “was aware of

the requirement that it must make a specific denial [of credit] on record or else the presumption would be that defendant was entitled to the credit for time spent on probation.” However, as pointed out by defendant, the “requirement” identified by the State is a misstatement of the law and is based on a prior version of section 5-6-4(h) that provided “that ‘[t]ime served on probation *** *shall be credited* by the court against a sentence of imprisonment *** unless the court orders otherwise.’ ” (Emphasis added.) *People v. Hollingsworth*, 89 Ill. 2d 466, 467 (1982) (citing Ill. Rev. Stat.1979, ch. 38, par. 1005-6-4(h)). Notably, the current version of section 5-6-4(h) provides that a term of probation “*shall not be credited* by the court *** unless the court orders otherwise.” (Emphasis added.) 730 ILCS 5/5-6-4(h) (West 2024). Under the current version of section 5-6-4(h), credit for time spent on probation is not automatic, and when the trial court makes no comment about credit for time on probation, the defendant does not receive it. *Sweeney*, 2012 IL App (3d) 100781, ¶¶ 38, 40. Ultimately, the State’s argument neither accurately states the law nor supports a finding that the trial court properly interpreted and applied section 5-6-4(h) when stating: “[T]he defendant is asking for days where he wasn’t actually in custody, but actually on probation, and the Court does not find that the statute applies in that situation.”

¶ 21 Finally, the State argues the record reflects an exercise of discretion by the trial court through comments that application of the statute was “more complex” than what appeared “on the surface” and that “when there is a revocation of probation, the Court has to take into account if it’s defendant’s third offense of imprisonment, periodic or otherwise.” Again, comments indicating that section 5-6-4(h) should be considered in full and not simply “on the surface,” are similar to the language utilized by the State in arguing section 5-6-4(h) did not authorize the credit requested by defendant. Additionally, a statement by the court that it was required to consider a “defendant’s third offense of imprisonment, periodic or otherwise” after a revocation of probation

does not clearly reflect that it was exercising its discretion under section 5-6-4(h), particularly when the court explicitly stated that the statute did not apply to days a defendant was on probation but not in custody.

¶ 22 In this case, section 5-6-4(h) granted the trial court the discretion to award defendant sentence credit for noncustodial time on probation. However, the court's comments reflect an erroneous belief that the statute did not apply when a defendant "wasn't actually in custody" and its failure to exercise its discretion to grant or deny credit. Defendant argues, and the State concedes, that where a court denies credit for time on probation without exercising its discretion, the proper remedy is to remand the matter for the limited purpose of allowing the trial court to exercise its discretion to determine whether to award the defendant credit under section 5-6-4(h). We accept defendant's argument and the State's concession on this point. In so holding, we express no opinion on the ultimate resolution of defendant's request for credit.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we remand for the limited purpose of allowing the trial court to exercise its discretion and determine whether to grant or deny defendant's request for credit for time he spent on probation under section 5-6-4(h) of the Code.

¶ 25 Cause remanded with directions.