

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 09/27/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0795
)
Appellee,) DEPARTMENT S
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
PATRICK WAYNE GARRETT,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-116897-001

The Honorable Cari A. Harrison, Judge

AFFIRMED AS MODIFIED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Division Chief Counsel
and Joseph T. Maziarz, Section Chief Counsel
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Thomas Baird, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Chief Judge

¶1 Patrick Wayne Garrett ("Appellant") appeals his sentencing for one felony conviction, arguing only that the trial court erred in failing to award him sufficient presentence

incarceration credit. Appellant maintains he should receive credit for one additional day of presentence incarceration, the State confesses error, and we agree.

¶2 A jury convicted Appellant of one count of attempting to commit robbery. See Ariz. Rev. Stat. ("A.R.S.") §§ 13-1001 (West 2012),¹ -1902.² The trial court found Appellant had two historical prior felony convictions and sentenced him to a slightly aggravated (maximum) term of six years' imprisonment in the Arizona Department of Corrections.³ The court also credited Appellant with 199 days of presentence incarceration.

¹ We cite the current version of the statutes as they appear in Westlaw if no changes material to our decision have since occurred.

² The trial court's October 18, 2011 sentencing minute entry states that Appellant waived trial and entered a plea of guilty. The record makes clear, however, that Appellant did not waive trial and was convicted after a trial by a jury. Pursuant to A.R.S. § 13-4036, we modify the trial court's October 18, 2011 sentencing minute entry to reflect that Appellant was convicted after a trial by a jury. See *State v. Ochoa*, 189 Ariz. 454, 462, 943 P.2d 814, 822 (App. 1997).

³ In sentencing Appellant, the trial court found two aggravating circumstances - that Appellant had committed the crime with the expectation of pecuniary gain (a factor found by the jury) and the vulnerable condition of the victim. See A.R.S. § 13-701(D)(6), (24). (The court also found one mitigating factor - Appellant's mental health - but found that the aggravating factors outweighed the mitigating factor.) The trial court's minute entry does not reflect that it found these factors, and neither the minute entry nor the sentencing transcript provides a specific statutory citation for the factors relied on by the court; moreover, the minute entry also does not indicate that the court imposed a slightly aggravated (maximum) sentence. In order to facilitate appellate review,

¶3 Appellant filed a timely notice of appeal. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A).

¶4 Appellant argues the trial court erred by failing to grant him one additional day of presentence incarceration credit. Because Appellant did not raise this objection in the trial court, we review for fundamental, prejudicial error. See *State v. Henderson*, 210 Ariz. 561, 567-68, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005); *State v. Payne*, 223 Ariz. 555, 560, ¶ 13, 225 P.3d 1131, 1136 (App. 2009). A trial court's failure to grant a defendant full credit for presentence incarceration constitutes such error. See *State v. Ritch*, 160 Ariz. 495, 498, 774 P.2d 234, 237 (App. 1989).

¶5 Under A.R.S. § 13-712(B), "[a]ll time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment . . . shall be credited against the term of imprisonment." Custody commences "when a defendant is booked into a detention facility," *State v. Carnegie*, 174 Ariz. 452, 453-54, 850 P.2d 690, 691-92 (App. 1993), but does not

the trial court should indicate on the record the type of sentence imposed, the aggravating/mitigating factors relied on by the court in imposing the sentence, and the applicable statutory citations. See *State v. Hampton*, 213 Ariz. 167, 183 n.18, ¶ 71, 140 P.3d 950, 966 n.18 (2006) (citing *State v. Anderson*, 211 Ariz. 59, 60-61 n.1, ¶ 4, 116 P.3d 1219, 1220-21 n.1 (2005)).

include the date sentence is imposed. *State v. Hamilton*, 153 Ariz. 244, 245-46, 735 P.2d 854, 855-56 (App. 1987).

¶6 The record indicates that Appellant was incarcerated for the current offense on April 1, 2011, and he remained in custody until his sentencing on October 18, 2011. The period from April 1, 2011, through October 17, 2011 (the day before sentencing) includes 200 days. Therefore, Appellant is entitled to 200 days of presentence incarceration credit, and the trial court committed fundamental error by only crediting him with 199 days of presentence incarceration. *See Ritch*, 160 Ariz. at 498, 774 P.2d at 237. Pursuant to A.R.S. § 13-4037, we modify Appellant's sentence to reflect one additional day of presentence incarceration credit, or a total of 200 days' presentence incarceration credit. In addition, we modify the court's sentencing minute entry as noted herein.

_____/S/_____
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

_____/S/_____
PATRICIA A. OROZCO, Judge

_____/S/_____
MAURICE PORTLEY, Judge