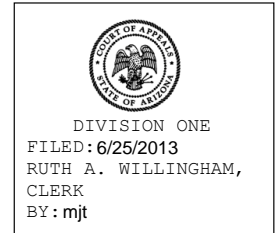


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0161
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SHANE ALLEN MOTARI,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-005514-001

The Honorable Cari A. Harrison, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
By Joseph T. Maziarz, Acting Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Melissa M. Swearingen, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Defendant Shane Allen Motari appeals his convictions and resulting sentences for two counts of aggravated assault. He argues the court miscalculated his presentence incarceration

credit. For the reasons that follow, we find no reversible error and affirm.

Facts and Procedural History

¶2 Motari's convictions and sentences stem from a motor vehicle collision caused by Motari on November 12, 2006. In 2006, Motari was originally charged with three counts of aggravated assault resulting from this event; however, those charges were dismissed without prejudice on June 5, 2007. The State re-filed on February 3, 2010, again charging Motari with three counts of aggravated assault. Following a jury trial, Motari was convicted of counts I and II and sentenced to concurrent sentences of 13 years for count I and 10 years for count II. The court credited Motari with 409 days of presentence incarceration credit. Motari appealed and we have jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 and 13-4033 (2010).¹

Discussion

¶3 As his sole issue on appeal, Motari argues the court miscalculated his presentence incarceration credit. Specifically, Motari states he did not receive full credit for his time spent in custody from his arrest on November 13, 2006

¹ We cite the current version of applicable statutes because no revisions material to this decision have occurred since the events in question.

to the date the charges were dismissed on June 5, 2007. Motari's claims are not supported by the record before us.

¶4 We will not disturb a sentence that is within statutory limits "unless a clear abuse of discretion appears." *State v. Willcoxson*, 156 Ariz. 343, 347, 751 P.2d 1385, 1389 (App. 1987). Presentence incarceration credit is granted for each day spent in custody from the date of booking to the date preceding sentence. See A.R.S. § 13-712 (2010); *State v. Carnegie*, 174 Ariz. 452, 453-54, 850 P.2d 690, 691-92 (App. 1993).

¶5 Motari was arrested on November 13, 2006 and taken into custody on that date. He was released from custody when his bond was accepted by the Maricopa County Sheriff's Office on February 17, 2007. Although Mortari asserts that he was in custody from November 13, 2006 through June 5, 2007 (when the original charges were dismissed without prejudice), he does not identify any evidence in the record indicating that he was in custody in 2007 after February 17. Furthermore, in lieu of filing a reply brief, Appellant has filed a "notice of concession" stating that "if Appellee's calculations on page 4 of its Answering Brief are true, Appellant has received proper credit for pre-incarceration time in this matter." On this record, therefore, we conclude that Motari was correctly given credit for 97 days for his time spent in custody in late 2006

and early 2007.

¶16 When the State re-filed the charges in 2010, Motari was arrested on April 21, 2011 and remained in custody until his sentencing on February 27, 2012. [Motari was correctly given credit for 312 days for his time in custody in 2011 and 2012, prior to his sentencing.

Conclusion

¶17 The trial court correctly calculated Motari's presentence incarceration credit as 409 days (97 + 312 = 409). We therefore affirm Motari's convictions and sentences.

/s/

JOHN C. GEMMILL, Presiding Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Judge

/s/

PATRICIA A. OROZCO, Judge