

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. 31.34



DIVISION ONE  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 09-0164  
)  
Appellee, ) DEPARTMENT S  
)  
v. ) **MEMORANDUM DECISION**  
)  
KENNETH PAUL GOWINS, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2004-014824-001 DT

The Honorable Arthur T. Anderson, Judge

**SENTENCE AFFIRMED AS MODIFIED**

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Terry Goddard, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
and Joseph T. Maziarz, Assistant Attorney General  
Attorneys for Appellee

Sharmila Roy Laveen  
Attorney for Appellant

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**T I M M E R, Chief Judge**

¶1 Kenneth Paul Gowins appeals the trial court's  
sentence imposed for transportation of marijuana for sale,

misconduct involving weapons, possession of drug paraphernalia, and possession of marijuana for sale. Gowins argues the court erred in failing to grant him forty-one days of presentence-incarceration credit for each count, despite recognizing his entitlement to the credit at the sentencing hearing. The State concedes error and we agree.

¶12 In May 2004, Gowins was indicted by a grand jury and charged with Count 1, transportation of marijuana for sale, a class 3 felony; Count 3, misconduct involving weapons, a class 4 felony; Count 5, possession of dangerous drugs for sale, a class 2 felony; Count 6, possession of drug paraphernalia, a class 6 felony; Count 7, possession of marijuana for sale, a class 2 felony; Count 8, possession of dangerous drugs for sale, a class 2 felony; and Count 9, misconduct involving weapons, a class 4 felony. The case proceeded to trial in November 2007. The court dismissed Counts 5 and 8, and the jury found Gowins guilty of Counts 1, 3, 6, and 7, and not guilty of Count 9.

¶13 At the sentencing, the court awarded Gowins forty-one days of presentence-incarceration credit for Count 7. The court subsequently stated that the four counts "will run concurrent with each other. And [the

court has] applied the credits of 41 days." The sentencing minute entry and order of confinement, however, only granted presentence-incarceration credit for Count 7. Upon finding a discrepancy between an oral pronouncement at a sentencing hearing and a minute entry or order of confinement, we must determine the trial court's intent through a review of the record. *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992). The sentencing hearing transcript shows the court intended to award presentence-incarceration credit for each count.

¶14 The failure to award full presentence-incarceration credit is fundamental error that must be corrected. *State v. Cofield*, 210 Ariz. 84, 86, ¶ 10, 107 P.3d 930, 932 (App. 2005). For concurrent sentences, the trial court must award a defendant with presentence-incarceration credit in each separate count. See *State v. Caldera*, 141 Ariz. 634, 638, 688 P.2d 642, 646 (1984).

¶15 This court has the authority to modify a sentence to reflect the correct amount of presentence-incarceration credit. See Ariz. Rev. Stat. § 13-4037 (2001); see also *Stevens*, 173 Ariz. at 496, 844 P.2d at 663. We therefore modify the sentence to grant Gowins forty-one days of presentence-incarceration credit for each of the four

counts and correct the minute entry and order of  
confinement to reflect this modification.

/s/

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Ann A. Scott Timmer, Chief Judge

CONCURRING:

/s/

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Michael J. Brown, Judge

/s/

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Margaret H. Downie, Judge