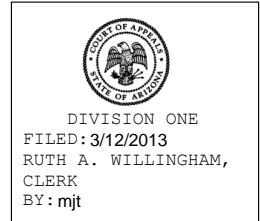


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 12-0165  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
ANTONIO GONZALES, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-132936-001

The Honorable Daniel G. Martin, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Division  
And Joseph T. Maziarz, Assistant Attorney General  
Attorneys for Appellee

Bruce F. Peterson, Maricopa County Legal Advocate Phoenix  
By Colin F. Stearns, Deputy Legal Advocate  
Attorneys for Appellant

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O R O Z C O, Judge

¶1 Antonio Gonzales (Defendant) appeals his sentence for misconduct involving weapons, a class four felony. He alleges

that the trial court erred by not awarding him presentence incarceration credit for all of the time that he spent in custody. For the following reasons, we affirm.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

¶12 On June 27, 2011, at approximately 11:00 p.m., Defendant was arrested for possessing a firearm while being a prohibited possessor and was charged with one count of misconduct involving weapons. He was booked on June 28, 2011 and was released later that day.

¶13 Defendant failed to appear at his trial and was tried in absentia. He was convicted and subsequently arrested on a bench warrant on January 27, 2012. On March 9, 2012, the trial court sentenced Defendant to three and one-half years' imprisonment and awarded him forty-three days of presentence incarceration credit.

¶14 Defendant timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031 (2010), and -4033.A.1 (2010).

#### **DISCUSSION**

¶15 Defendant contends that the trial court erred when it awarded him forty-three days of presentence incarceration credit, rather than the forty-four days to which he alleges he was entitled. A trial court's failure to award a defendant full

credit for presentence incarceration constitutes fundamental error. *State v. Ritch*, 160 Ariz. 495, 498, 774 P.2d 234, 237 (App. 1989).

¶16 Pursuant to A.R.S. § 13-712.B (2010), a defendant is entitled to presentence incarceration credit for "[a]ll time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense." For purposes of calculating a defendant's presentence incarceration credit, "'custody' begins 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). A court must award a defendant a full day of credit for the day that he was booked into a detention facility, regardless of the time of day the booking occurred. *Id.* at 454, 850 P.2d at 692. However, presentence incarceration credit does not include the day the defendant's sentence is imposed. *State v. Hamilton*, 153 Ariz. 244, 245-46, 735 P.2d 854, 855-56 (App. 1987).

¶17 Defendant asserts that he should receive an additional day of presentence incarceration credit for June 27, 2011. He contends that he was both arrested and booked on June 27, 2011, and the trial court committed fundamental error in not awarding him credit for that day. Defendant bases this assertion on the testimony of his arresting officer, Phoenix Police Officer M. (Officer M.), who stated that he arrested Defendant at

approximately 11:00 p.m. on June 27, 2011 and that Defendant "was booked that same night." Additionally, Officer M. completed a Release Questionnaire for Defendant and dated it June 27, 2011.

¶18 However, when the State asked Officer M. if the booking could have taken place close to midnight, Officer M. answered yes. The State also introduced a certified copy of Defendant's booking photo that included a booking date of June 28, 2011.

¶19 Based on our review of the record, we find that Defendant was booked into a detention facility on June 28, 2011; therefore, he is not entitled to an additional day of presentence incarceration credit for June 27, 2011. Defendant was awarded one day of credit for June 28, 2011, the day he was initially booked and released from the detention facility. Additionally, the trial court awarded Defendant forty-two days of presentence incarceration credit for the period from January 27, 2012, the day he was re-arrested after his conviction, through his sentencing on March 9, 2012. The trial court properly awarded Defendant forty-three days of presentence incarceration credit. Accordingly, we find no fundamental error.

**CONCLUSION**

¶10 For the foregoing reasons, we affirm.

/S/

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PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

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PETER B. SWANN, Judge

/S/

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DANIEL A. BARKER, Judge Pro Tempore\*

\*The Honorable Daniel A. Barker (Retired), Judge Pro Tempore of the Court of Appeals, Division One, is authorized by the Chief Justice of the Arizona Supreme Court to participate in the disposition of this appeal pursuant to Article 6, Section 3, of the Arizona Constitution and A.R.S. §§ 12-145 to -147 (2003).