

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: 7/9/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0470
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
PAUL GARCIA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-162576-001

The Honorable Warren J. Granville, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
by Joseph T. Maziarz, Section Chief Counsel,
Criminal Appeals Section
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, Presiding Judge

¶1 Paul Garcia ("Appellant") appeals his award of presentence incarceration credit, arguing the trial court erred in crediting him for only 210 days rather than 211 days. For the following reasons, we affirm.

BACKGROUND¹

¶2 On December 16, 2011, a grand jury issued an indictment, charging Appellant with one count of aggravated assault on a peace officer, a class 2 dangerous felony (Count 1), two counts of aggravated assault, class 3 dangerous felonies (Counts 2 and 3), one count of theft of means of transportation, a class 3 felony (Count 4), and one count of unlawful flight from a law enforcement vehicle, a class 5 felony (Count 5).

¶3 Following a trial, the jury found Appellant guilty as charged of Counts 2 through 5. As to Count 1, the jury convicted Appellant of disorderly conduct, a lesser-included offense of aggravated assault. The trial court sentenced Appellant to an aggregate total of 25.75 years' imprisonment in the Arizona Department of Corrections, and credited Appellant for 210 days of presentence incarceration.

¶4 Appellant filed a timely notice of appeal. We have appellate jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes sections 12-120.21(A)(1) (West 2013),² 13-4031, and 13-4033.

¹ We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

² We cite the current version of the applicable statutes because no revisions material to this decision have occurred since Appellant's crimes.

ANALYSIS

¶5 Appellant argues the trial court erred because it did not credit him for one additional day of presentence incarceration. Because Appellant failed to object at sentencing to the trial court's award of 210 days, we review for fundamental, prejudicial error. See *State v. Henderson*, 210 Ariz. 561, 567-68, ¶¶ 19-26, 115 P.3d 601, 607-08 (2005).

¶6 A person is entitled to receive presentence incarceration credit for all time actually spent in custody, excluding the day that sentence is imposed. See *State v. Hamilton*, 153 Ariz. 244, 245-46, 735 P.2d 854, 855-56 (App. 1987). "Time actually spent in custody" refers to actual incarceration in a jail or prison. *State v. Carnegie*, 174 Ariz. 452, 453, 850 P.2d 690, 691 (App. 1993). For the purpose of determining presentence incarceration credit, "custody" begins when the defendant is booked into a detention facility. *Id.* at 453-54, 850 P.2d at 691-92.

¶7 Appellant contends that he was arrested and booked on December 11, 2011, and therefore, his time of incarceration should have begun on that date.³ The record, however, belies

³ The basis for Appellant's argument seems to be that the "final" release questionnaire filled out by the arresting officer is dated December 11, 2011, and contains Appellant's booking number. The arresting officer's "draft" release questionnaire, which is nearly identical to the final version,

Appellant's contention, and he therefore fails to carry his burden of establishing that error occurred. *See Henderson*, 210 Ariz. at 567, ¶¶ 19-20, 115 P.3d at 607.

¶8 The record indicates that at 11:30 p.m. on December 11, 2011, police officers arrested Appellant. They transported him to the hospital to be treated for minor injuries and a bite wound caused by a police dog. A detective arrived at the hospital at "almost midnight or a little after midnight," interviewed one of Appellant's victims, and then proceeded to Appellant's room to check on his condition. After Appellant was later released from the hospital, a police officer transported him to a police station for questioning. At the station, the detective interviewed Appellant for approximately thirty to forty minutes. After the interview, an officer drew blood from Appellant and later transported him to the main jail. Based on the foregoing timeline created by the record, Appellant could not have been booked into jail before midnight on December 11, 2011, the day he was arrested. Moreover, Appellant's booking photograph indicates he was booked into the detention facility on December 12, 2011.

¶9 Appellant remained in custody until he was sentenced on July 9, 2012 - a total of 210 days. Accordingly, Appellant

is also dated December 11, 2011, but does not contain a booking number issued to Appellant.

was entitled to credit for 210 days of presentence incarceration, the precise amount of credit awarded by the trial court.

CONCLUSION

¶10 The trial court's award of presentence incarceration credit is affirmed.

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

CONCURRING:

_____/S/_____
MARGARET H. DOWNIE, Judge

_____/S/_____
DIANE M. JOHNSEN, Chief Judge