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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0626
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ALEJANDRO GARCIA ESQUIVEL,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-144412-001

The Honorable Christine E. Mulleneaux, Judge *Pro Tem*

SENTENCE MODIFIED

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D O W N I E, Judge

¶1 Alejandro Garcia Esquivel contends that the trial court improperly calculated his presentence incarceration

credit. We agree and therefore modify his sentence.

FACTS AND PROCEDURAL HISTORY

¶12 Esquivel was arrested and incarcerated on August 26, 2011.¹ On August 27, 2011, he was notified of his preliminary hearing date and released from custody. When he failed to appear for the preliminary hearing, a bench warrant was issued for his arrest. Esquivel was arrested pursuant to the warrant on September 29, 2011. He remained in custody until September 30, 2011, when he was released on bond.

¶13 Esquivel was convicted after a jury trial. He was taken into custody on July 27, 2012, where he remained until sentencing on September 21, 2012. At sentencing, defense counsel requested that Esquivel be credited for presentence incarceration time, stating: "He does have, according to my count, 52 days credit for time served. So I would ask that he get credit for that." The court sentenced Esquivel to a six-year term of imprisonment and awarded him 52 days of presentence incarceration credit.

¶14 Esquivel timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A).

¹ Details of the offense are irrelevant to the narrow issue presented on appeal.

DISCUSSION

¶15 Esquivel argues the trial court erred in awarding him 52 days of presentence incarceration credit rather than the 60 days to which he claims entitlement under A.R.S. § 13-712(B). Fundamental error review occurs when, as here, the appealing party failed to properly raise the issue before the trial court. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). Under this standard of review, the appellant must establish that fundamental error occurred and that the error prejudiced him. *Id.* at ¶ 20.

I. Presentence Incarceration Credit

¶16 Section 13-712(B) provides that “[a]ll time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment.” When calculating presentence incarceration credit, a defendant is entitled to a full day of credit for any partial day spent in custody. *State v. Carnegie*, 174 Ariz. 452, 454, 850 P.2d 690, 692 (App. 1993). A defendant does not, however, receive credit for the day of sentencing. See A.R.S. § 13-712(A) (for defendants in custody on sentencing day, sentencing day is first day of sentence); *State v. Lopez*, 153 Ariz. 285, 285, 736 P.2d 369, 369 (1987) (if sentencing day is first day of sentence, sentencing day not counted toward presentence incarceration credit). Applying these standards,

Esquivel was entitled to 60 days of presentence incarceration credit.²

¶7 It is fundamental, prejudicial error to impose an illegal sentence. *State v. McPherson*, 228 Ariz. 557, 559, ¶ 4, 269 P.3d 1181, 1183 (App. 2012) (citations omitted). A sentence that does not comply with a mandatory sentencing statute is illegal. *State v. Joyner*, 215 Ariz. 134, 137, ¶ 5, 158 P.3d 263, 266 (App. 2007) (citation omitted). The sentencing statute at issue here is mandatory. *See State v. Williams*, 128 Ariz. 415, 416, 626 P.2d 145, 146 (App. 1981) (“A statute such as [A.R.S. § 13-712(B)], providing for pre-sentence confinement credit, is mandatory, and the sentencing court has no discretion in the matter.”). By not crediting Esquivel with 60 days of presentence incarceration credit, the trial court imposed a sentence that did not comply with A.R.S. § 13-712(B), constituting fundamental, prejudicial error.³

II. Invited Error

¶8 The State argues Esquivel is foreclosed from raising this issue on appeal by the doctrine of invited error. Under

² We calculate the credit as follows:
Aug. 26 – Aug. 27, 2011: 2 days
Sept. 29 – Sept. 30, 2011: 2 days
July 27 – Sept. 20, 2012: 56 days

³ The State does not contest that Esquivel was entitled to the additional credit or that the miscalculation constituted fundamental error.

that doctrine, a party who deliberately causes a court to commit error cannot complain of that same error on appeal. *In re MH2010-002348*, 228 Ariz. 441, 445, ¶ 12, 268 P.3d 392, 396 (App. 2011) (citations omitted). The doctrine exists to prevent parties who inject error for strategic purposes from later benefiting from that error on appeal. *State v. Lucero*, 223 Ariz. 129, 137, ¶¶ 26-27, 220 P.3d 249, 257 (App. 2009). Under the doctrine of invited error, we will not grant relief if the party complaining of the error on appeal was the source of the error. *State v. Logan*, 200 Ariz. 564, 565-66, ¶¶ 9, 11, 30 P.3d 631, 632-33 (2001).

¶19 Defense counsel asked the trial court to give Esquivel credit for time served, stating that, "according to my count," 52 days was appropriate. However, the trial court bears the ultimate responsibility for calculating presentence incarceration credit. *State v. Nieto*, 170 Ariz. 18, 19, 821 P.2d 285, 286 (App. 1991) (It is "abundantly clear that the sentencing judge has the duty and responsibility of computing and pronouncing the presentence custody credit at the time of sentence."). Because the court had an independent duty to calculate the credit owed Esquivel, the invited error doctrine does not preclude Esquivel's appeal.

CONCLUSION

¶10 For the reasons stated, we modify Esquivel's sentence by awarding him 60 days of presentence incarceration credit, rather than the 52 days previously awarded.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
LAWRENCE F. WINTHROP, Presiding Judge

/s/
JON W. THOMPSON, Judge