

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

MICHAEL ANTHONY GUIDO, *Appellant*.

Nos. 1 CA-CR 15-0711, 1 CA-CR 15-0713
(Consolidated)
FILED 7-12-2016

Appeal from the Superior Court in Maricopa County
Nos. CR2011-109461-001 SE
CR2014-001174-001 DT
The Honorable Warren Granville, Judge

CONVICTION AFFIRMED, SENTENCE AFFIRMED AS MODIFIED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Christopher V. Johns
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Michael J. Brown delivered the decision of the Court, in which Judge Randall M. Howe and Judge Kenton D. Jones joined.

B R O W N, Chief Judge:

¶1 Michael Anthony Guido appeals his conviction and sentence for second-degree murder, as well as the trial court's revocation of his probation and a related probation revocation and disposition, asserting he is entitled to 426 days of presentence incarceration credit instead of the 298 days awarded by the court. In response, the State concedes the error.

¶2 Failure to award full credit for time served in presentence incarceration is fundamental error. *State v. Cofield*, 210 Ariz. 84, 86, ¶ 10 (App. 2005). All 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. Arizona Revised Statutes sections 13-712(B), -903(F). If probation is revoked and the sentence imposed is concurrent with the sentence imposed on the new criminal charge, a defendant is entitled to presentence incarceration credit on both sentences for all time spent in custody. *State v. Brooks*, 191 Ariz. 155, 156 (App. 1997).

¶3 While on probation for child abuse, Guido was convicted of second-degree murder. The trial court revoked his probation and sentenced him to 22 years' imprisonment, with credit for 233 days of presentence incarceration. After filing his notice of appeal, Guido filed a motion to correct the time credit calculation, which was denied; however, the court recalculated the presentence incarceration credit to reflect that Guido was entitled to a total of 298 days.

¶4 Because we accept the State's concession of error, we modify Guido's sentence to reflect a total of 426 days of presentence incarceration

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credit. We otherwise affirm Guido's conviction and sentence, and the resulting disposition from the revocation of his probation.



Ruth A. Willingham · Clerk of the Court
FILED : AA