

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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, *Respondent*,

v.

JAMES FLOYD ARNN, III, *Petitioner*.

No. 1 CA-CR 15-0551 PRPC
FILED 3-23-2017

Petition for Review from the Superior Court in Coconino County
No. CR2014-00316
The Honorable Cathleen Brown Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Coconino County Attorney's Office, Flagstaff
By Eric Ruchensky
Counsel for Respondent

Coconino County Public Defender's Office, Flagstaff
By Brad Bransky
Counsel for Petitioner

STATE v. ARNN
Decision of the Court

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the court, in which Presiding Judge Kenton D. Jones and Judge Patricia K. Norris joined.

M c M U R D I E, Judge:

¶1 James Floyd Arnn, III petitions for review from the dismissal of his petition for post-conviction relief. We review the trial court's denial of post-conviction relief for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006). We have considered the petition for review and for the reasons stated, grant review and deny relief.

FACTS AND PROCEDURAL BACKGROUND

¶2 Arnn pled guilty to trafficking in stolen property and theft of a means of transportation. The trial court imposed concurrent prison terms, the longest being 3.5 years on the conviction for theft of a means of transportation, and credited Arnn with 223 days of presentence incarceration against both sentences. The court further ordered that the sentences run concurrent to a sentence Arnn was serving in an out-of-state federal case.

¶3 Arnn filed a petition for post-conviction relief, seeking credit for an additional 350 days of presentence incarceration. The claim was based on time Arnn spent in federal custody on the federal charge from April 30, 2013, the date the federal authorities notified Arizona of Arnn's whereabouts after becoming aware of the warrant for his arrest on the Arizona charges, to April 15, 2014, the date Arizona picked up Arnn on the warrant for transport to Arizona. Ruling that Arnn was not entitled to additional credit for presentence incarceration because he was not being held in custody on the Arizona charges until he was picked up by Arizona on April 15, 2014, the trial court dismissed the petition. This petition for review followed.

DISCUSSION

¶4 Arnn argues that the trial court erred in not granting him additional credit for presentence incarceration because, due to the Arizona warrant, the federal authorities denied him enrollment in a federal drug treatment program, and successful participation in that program would have significantly reduced his federal sentence. Thus, he asserts, he should

STATE v. ARNN
Decision of the Court

be considered in constructive custody on the Arizona charges for purposes of presentence incarceration credit, from the date federal authorities notified Arizona about his presence in the federal prison system.

¶5 Credit for presentence incarceration is governed by A.R.S. § 13-712(B), which provides: “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 otherwise provided for by this chapter.” Arizona courts have interpreted this statute to mean that presentence incarceration credit “may only be awarded for time actually spent in custody pursuant to the offense.” *State v. Bridgeforth*, 156 Ariz. 58, 59 (App. 1986), *aff’d as modified*, 156 Ariz. 60 (1988); *see also State v. San Miguel*, 132 Ariz. 57, 60–61 (App. 1982) (“Custody credit is only allowed where the time is ‘actually spent in custody pursuant to an offense. . . .’”).

¶6 “It is the defendant's burden at sentencing to demonstrate entitlement to presentence incarceration credit.” *State v. Cecena*, 235 Ariz. 623, 625, ¶ 10 (App. 2014). To meet this burden, a defendant must show that the Arizona charge was a “‘but for’ cause of his or her out-of-state presentence incarceration.” *Cecena*, 235 Ariz. at 626, ¶ 10. A defendant is not entitled to presentence incarceration credit for time based on out-of-state custody on an out-of-state charge. *State v. Lalonde*, 156 Ariz. 318, 320 (App. 1987). This is true even if, as is the case here, the defendant had an outstanding Arizona warrant that would result in a hold being placed on him. *State v. Horrisberger*, 133 Ariz. 569, 570 (App. 1982). Thus, absent an allegation that he would have been released from federal custody during the period for which he is requesting the additional credit if not for the Arizona warrant, Arnn is not entitled to credit for his time in federal custody. *Id.*

¶7 Arnn claims that because of the Arizona warrant, he was prohibited from participating in a federal rehabilitative service that may have resulted in an early release from federal custody. Therefore, because of this lost federal opportunity he was in “constructive custody” from the date the warrant issued until he was transported back to Arizona. Not surprisingly, Arnn cites no authority for this novel proposition and does not discuss this court’s holding in *Horrisberger*. Arnn failed to prove that he was in custody on the Arizona charge while serving the federal sentence.

STATE v. ARNN
Decision of the Court

CONCLUSION

¶8 The trial court did not abuse its discretion by concluding Arnn was not entitled to additional presentence incarceration credit, and summarily dismissing the petition for post-conviction relief. Accordingly, although we grant review, we deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA