

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALLEN REED, *Appellant*.

No. 1 CA-CR 16-0621
FILED 10-19-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-134992-002
The Honorable Margaret R. Mahoney, Judge

AFFIRMED AS MODIFIED

COUNSEL

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

Maricopa County Legal Defender's Office, Phoenix
By Cynthia D. Beck
Counsel for Appellant

STATE v. REED
Decision of the Court

MEMORANDUM DECISION

Judge Thomas C. Kleinschmidt¹ delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Peter B. Swann joined.

KLEINSCHMIDT, Judge:

¶1 Allen Reed appeals from his convictions for armed robbery, a class 3 felony; burglary, a class 4 felony; and unlawful flight from a law enforcement vehicle, a class 5 felony. Reed asserts the superior court committed fundamental error by incorrectly calculating his presentence incarceration credit. For the following reasons, we affirm Reed's convictions and sentences but modify his sentence to reflect the correct amount of presentence incarceration credit.

FACTUAL AND PROCEDURAL HISTORY

¶2 After a jury trial, Reed was convicted of armed robbery, burglary, and unlawful flight from a law enforcement vehicle. Reed was sentenced to concurrent terms of six, three, and two and one-quarter years' imprisonment, respectively, and was granted 393 days' presentence incarceration credit.

¶3 Reed 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), 13-4031 and 13-4033.

DISCUSSION

¶4 Reed's only assertion on appeal is that the superior court erred in calculating presentence incarceration credit. A defendant is entitled to credit for "[a]ll time actually spent in custody." A.R.S. § 13-712(B). "Time actually spent in custody" means actual incarceration following booking into a detention facility, "not simply a restrain on one's freedom," or time spent in police custody. A.R.S. § 13-712(A); *State v. Carnegie*, 174 Ariz. 452, 453-54 (App. 1993). When calculating presentence incarceration credit, time in custody begins when the defendant is booked into a prison or jail. *Id.* The

¹ The Honorable Thomas C. Kleinschmidt, retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

STATE v. REED
Decision of the Court

date sentence is imposed, however, does not count for presentence incarceration credit. A.R.S. § 13-712(B); *State v. Hamilton*, 153 Ariz. 244, 245-46 (App. 1987).

¶5 The record indicates Reed was booked into a detention facility on July 28, 2015. Reed was sentenced on August 26, 2016. Accordingly, as the State concedes, Reed is entitled to 395 days of presentence incarceration credit. By authority of A.R.S. § 13-4037, the superior court's sentence is modified to include presentence incarceration credit of 395 days rather than the 393 days originally granted.

CONCLUSION

¶6 For the foregoing reasons, we affirm Reed's convictions and sentences but modify his sentence to reflect 395 days of presentence incarceration credit.



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