

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. 31.34



DIVISION ONE
FILED: 09/14/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0187
)
Appellee,) DEPARTMENT S
)
v.) **MEMORANDUM DECISION**
)
WALLACE STEELE, JR.,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-127432-001 SE

The Honorable Kristin Hoffman, Judge

AFFIRMED AS MODIFIED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Jeffrey L. Sparks, Assistant Attorney General
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Thomas Baird, Deputy Public Defender
Attorneys for Appellant

T I M M E R, Chief Judge

¶1 This appeal, initiated by Steele, requires us to
decide whether the trial court committed fundamental error in

sentencing by failing to grant Steele seven additional days of pre-sentence incarceration credit. The State confesses error, and we agree.

¶2 After Steele was convicted of multiple offenses,¹ the trial court imposed consecutive prison sentences and granted him 296 days' pre-sentence incarceration credit. See Ariz. Rev. Stat. ("A.R.S.") § 13-712(B) (2010) ("All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment . . . shall be credited against the term of imprisonment").² Our review of the record confirms Steele's uncontested contention on appeal that he was actually entitled to 303 days' pre-sentence incarceration credit.³ The court's failure to grant all pre-sentence incarceration credit due constitutes fundamental error, which this court can correct

¹ The jury convicted Steele of five counts of sexual conduct with a minor under 15 years of age and a dangerous crime against children, all class two nondangerous, nonrepetitive felonies.

² We cite to the current version of the applicable statute because no revisions material to this decision have since been made.

³ The police arrested Steele in the evening of April 21, 2009, but the record reflects Steele was not booked into the detention facility until April 22. Steele was held without bond and remained incarcerated until the court sentenced him on February 19, 2010. For purposes of calculating incarceration credit, we include the first day of custody and exclude the day of sentencing. *State v. Carnegie*, 174 Ariz. 452, 453-54, 850 P.2d 690, 691-92 (App. 1993); *State v. Hamilton*, 153 Ariz. 244, 245-46, 735 P.2d 854, 855-56 (App. 1987). The time period from April 22, 2009 to February 19, 2010 is 303 days.

by modifying the sentence appropriately. A.R.S. § 13-4037 (A) (2010)⁴; see *State v. Ritch*, 160 Ariz. 495, 499, 774 P.2d 234, 238 (App. 1989). We therefore modify the sentences by granting Steele an additional seven days of pre-sentence incarceration credit. With this modification, we affirm Steele's convictions and sentences.

/s/
Ann A. Scott Timmer, Chief Judge

CONCURRING:

/s/
Peter B. Swann, Judge

/s/
Jon W. Thompson, Judge

⁴ We cite to the current version of the applicable statute because no revisions material to this decision have since been made.