

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

SCOTT ALLEN WOODINGTON,
Appellant.

Nos. 2 CA-CR 2020-0041 and
2 CA-CR 2020-0042 (Consolidated)
Filed February 26, 2021

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pima County
Nos. CR20151778001 and CR20153529001
The Honorable Christopher Browning, Judge

AFFIRMED AS MODIFIED

COUNSEL

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Counsel for Appellee

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MEMORANDUM DECISION

Presiding Judge Espinosa authored the decision of the Court, in which Judge Eckerstrom and Judge Eppich concurred.

ESPINOSA, Presiding Judge:

¶1 Scott Woodington appeals from his sentence for second-degree murder, arguing he is entitled to presentence incarceration credit that the trial court failed to order. For the following reasons, his sentence is affirmed as modified.

Factual and Procedural Background

¶2 In May 2015, Woodington, driving with a blood alcohol content of .290 while his license was suspended, struck a motorcycle driven by A.H. He was charged with two counts of aggravated assault, four felony DUI counts, criminal damage, possession of a deadly weapon by a prohibited possessor, and two counts of criminal endangerment (“Case One”).¹ After A.H. died from the injuries suffered during the collision, the state charged Woodington in a separate indictment with second-degree murder (“Case Two”).² Cases One and Two were consolidated for a jury trial, and Woodington was convicted of the murder charge, both counts of aggravated assault, all four felony DUI counts, criminal damage, and two counts of criminal endangerment.³

¶3 For his Case One convictions, Woodington was sentenced to concurrent terms of imprisonment, the longest of which were twenty-two years. These sentences were ordered to be served concurrently to the

¹Pima County Superior Court No. CR20151778001.

²Pima County Superior Court No. CR20153529001.

³Woodington separately pled guilty to the possession of a deadly weapon by a prohibited possessor charge. And the jury found him guilty of a lesser-included misdemeanor endangerment for one of the endangerment charges.

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sentences imposed in a separate, unrelated case (“Case Three”).⁴ Woodington was sentenced to twenty-five years’ imprisonment for his Case Two conviction, to be served consecutively to his sentences in Cases One and Three. He received 812 days’ presentence incarceration credit in Case One for his aggravated assault, prohibited possessor, criminal damage, and felony endangerment convictions. We affirmed Woodington’s Case One and Case Two convictions on appeal, but vacated his Case Two second-degree murder sentence, concluding that the sentence could not be consecutive to the aggravated assault sentences from Case One, and remanded to the trial court for resentencing. *State v. Woodington*, Nos. 2 CA-CR 2017-0295, 2 CA-CR 2018-0100 (Ariz. App. May 28, 2019) (consol. mem. decision).

¶4 Woodington was resentenced in January 2020. The trial court again sentenced him to twenty-five years’ imprisonment on the second-degree murder conviction but ordered that it be served concurrently with the terms for his Case One aggravated assault convictions. The court awarded Woodington zero days of presentence incarceration credit for the second-degree murder conviction. Woodington appealed, and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Discussion

¶5 Woodington first requests that we modify his Case Two second-degree murder sentence and give him credit for 812 days’ presentence incarceration. He acknowledges he did not object to the alleged sentencing error, but correctly notes that a trial court’s failure to credit presentence incarceration is fundamental, prejudicial error. *See State v. Ritch*, 160 Ariz. 495, 498 (App. 1989). A defendant is entitled to presentence incarceration credit for “[a]ll time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense.” A.R.S. § 13-712(B). While a defendant is entitled to apply presentence incarceration credit for concurrent sentences to each sentence, *see State v. Cruz-Mata*, 138 Ariz. 370, 375-76 (1983), he is not entitled to credit on more than one consecutive sentence, “even if the defendant was in custody pursuant to *all* of the underlying charges prior to trial,” *State v.*

⁴In that case—Pima County Superior Court No. CR20151912001—Woodington had been sentenced to concurrent eleven-year terms of imprisonment for four previous DUI convictions.

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McClure, 189 Ariz. 55, 57 (App. 1997). In other words, a defendant is not entitled to “double credit.” *State v. Cuen*, 158 Ariz. 86, 88 (App. 1988).

¶6 The state contends Woodington is entitled to 448 days of presentence incarceration credit for his second-degree murder sentence because while it is now concurrent with the Case One aggravated assault sentences, it remains consecutive to the sentences imposed in Case Three.⁵ Woodington was in custody from August 24, 2015 until August 28, 2017 for the second-degree murder offense, and from July 16, 2015 to June 6, 2016 for the Case Three offenses; he received presentence incarceration credit for the time he was in custody for those offenses. For the overlapping time of August 24, 2015 until June 6, 2016, Woodington is not entitled to presentence incarceration credit. *See McClure*, 189 Ariz. at 57; *Cuen*, 158 Ariz. at 88. He is, however, entitled to credit from June 6, 2016 to August 28, 2017. Accordingly, we modify Woodington’s second-degree murder sentence to reflect credit for 448 days of presentence incarceration.⁶ *See* A.R.S. § 13-4037(A); *State v. Brooks*, 161 Ariz. 177, 181 (App. 1989).

¶7 Woodington also requests that we correct the sentences imposed for the two aggravated assault convictions to reflect 812 days’ presentence incarceration credit. As the state points out, we have already affirmed those sentences on appeal, *see Woodington*, Nos. 2 CA-CR 2017-0295, 2 CA-CR 2018-0100, ¶ 31, and although the minute entry may suggest Woodington was resentenced on the Case One aggravated assault convictions, the oral pronouncement indicates he was not. In imposing Woodington’s new sentence for second-degree murder, the trial court specifically noted “it is the Court’s intention that all previously entered and articulated sentences and orders regarding sentencing matters remain in full force and effect, and it is the Court’s intention that they be affirmed and not modified in any manner.”

⁵Our initial disposition of this case awarded Woodington more presentence incarceration credit based on our resolution of an issue not raised by either party. We have granted the state’s motion for reconsideration and withdrawn that decision, over Woodington’s opposition, to correct that erroneous determination.

⁶In his reply brief, Woodington conceded that this “appears to be a correct calculation,” though in his recent response to the state’s motion for reconsideration of our withdrawn decision, he contends our previous calculation of 736 days’ presentence incarceration credit “is correct.”

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¶8 We agree with the state that Woodington’s presentence incarceration credit of 812 days for the aggravated assault convictions remains in effect. *Cf. State v. Ovante*, 231 Ariz. 180, ¶ 38 (2013) (oral pronouncement controls over any ambiguity in written sentence of imprisonment). Nevertheless, to avoid any further uncertainty, we strike the portion of the January 27, 2020 sentencing minute entry purporting to impose sentences for Woodington’s two Case One aggravated assault convictions, specifically, the material under the heading “As to CR20151778-001” on pages one through three. *See State v. Veloz*, 236 Ariz. 532, ¶ 21 (App. 2015) (“We may order the minute entry corrected if the record clearly identifies the intended sentence.”).

Disposition

¶9 For the foregoing reasons, Woodington’s sentence for second-degree murder is affirmed as modified, and we strike the portion of the sentencing minute entry as noted.