DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

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STATE OF FLORIDA,

Appellant,

v.

JESSE LEE SMITH,

Appellee.

Nos. 2D20-3184; 2D20-3185; 2D20-3188
CONSOLIDATED

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December 29, 2021

Appeal from the Circuit Court for Pinellas County; Philip J. Federico, Judge.

Ashley Moody, Attorney General, Tallahassee, and Lindsay D. Turner, Assistant Attorney General, Tampa, for Appellant.

Howard L. Dimmig, II, Public Defender, and Clark E. Green, Assistant Public Defender, Bartow, for Appellee.

SMITH, Judge.

In this consolidated appeal, the State challenges the sentences imposed following a plea that resolved three circuit court cases—a new charge of aggravated battery in a detention facility (2D20-3188)

and two separate violation of probation cases (2D20-3184 and 2D20-3185), with underlying offenses of escape and introduction of contraband into a facility. For various reasons, Jesse Lee Smith spent different lengths of time in jail awaiting the resolution of each of the individual cases, which resulted in different amounts of jail credit due in each case. Therefore, Mr. Smith was due significantly more days of jail credit for the case on which he spent the longest amount of time in jail than the fewer days of credit he was due in the other cases. As part of the plea process, the trial court indicated that it would award the longest amount of jail credit due on one case in each of the cases, and the plea went forward on all cases. While the sentences imposed for each count at the global sentencing were above the lowest permissible sentences scored, the application of the highest number of days of jail credit to each case based on the amount due in only one of them considerably reduced the length of time Mr. Smith will serve on those sentences.

The only issue raised by the State relates to the question of whether the award of more jail credit than is due in a particular case constitutes an improper downward departure sentence below the lowest permissible sentence as calculated by Mr. Smith's

scoresheet. We hold that it does not; nor can the trial court otherwise rescind the jail credit erroneously awarded in this instance. *See* § 921.0026, Fla. Stat. (2020) (setting forth the bases upon which a downward departure sentence may be given); Fla. R. Crim. P. 3.700(a) ("The term sentence means the pronouncement by the court of the penalty imposed on a defendant for the offense of which the defendant has been adjudged guilty."); *see also Lebron v. State*, 870 So. 2d 165, 165 (Fla. 2d DCA 2004) ("[T]his court has repeatedly held that a trial court may not rescind jail credit previously awarded even if the initial award was improper.").[1]

Based on the argument raised and the scope of review available within an appeal brought by the State, *see* Fla. R. App. P. 9.140, we find no reversible error in the revocations of probation, the judgment, or the sentences in this consolidated appeal. In so

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[1] Section 921.161 clearly recognizes jail credit as something applied against the sentence imposed and thereby as a distinct thing apart from the sentence but reflected therein. *See also* §§ 921.0024 (indicating that the lowest permissible sentence is calculated without mention of jail credit), .00265(1) (indicating that a downward departure sentence is determined based on the lowest permissible sentence); Fla. R. Crim. P. 3.700(b) ("Every sentence . . . shall be pronounced in open court, including, if available at the time of sentencing, the amount of jail time credit the defendant is to receive.").

doing, however, we caution the trial court that the imposition of jail credit should be limited to that due based on time spent in jail for each offense. *See* § 921.161; *Nieves v. State*, 113 So. 3d 162, 163 (Fla. 2d DCA 2013); *Washington v. State*, 873 So. 2d 609, 610 (Fla. 2d DCA 2004) ("[A] defendant who is arrested for different offenses on different dates is not entitled to have jail credit applied equally to all prison sentences even though the sentences are run concurrently." (citing *Dennis v. State*, 754 So. 2d 857, 858 (Fla. 3d DCA 2000))).[2]

Affirmed.

CASANUEVA and BLACK, JJ., Concur.

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[2] We note that nothing in this appeal should be construed as relating to consideration of the unraised issue of whether the State may successfully challenge a plea where the trial court injects itself into the plea process and accepts a plea offer contingent on an award of jail credit beyond that due in the face of the State's objection. *See State v. Warner*, 721 So. 2d 767, 769 n.2 (Fla. 4th DCA 1998) ("[W]hen the state is not a party to a plea agreement, the agreement itself cannot serve as a basis for a downward departure from the sentencing guidelines."), *approved*, 762 So. 2d 507 (Fla. 2000) (approving *Warner*, 721 So. 2d 767, and concluding that while the trial court can choose to discuss potential sentences as part of the plea process there is a distinction to be made when the trial court's input on potential sentences faced might be impacted by other evidence presented at sentencing, the State's objections, or the victim's statements).

Opinion subject to revision prior to official publication.