

IN THE COURT OF APPEALS OF IOWA

No. 9-471 / 08-0327
Filed July 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LEONARD RAY PEEL,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Timothy J. Finn,
Judge.

Leonard Peel appeals from his sentence upon conviction for second-
degree robbery. **AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED.**

Robert A. Wright, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant
Attorney General, Stephen Holmes, County Attorney, and Timothy Meals,
Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On November 22, 2000, Leonard Peel was charged with second-degree robbery in violation of Iowa Code sections 711.1 and 711.3 (1999) for a crime committed on November 12, 2000. On January 19, 2001, a jury found Peel guilty as charged. The district court set sentencing for March 5, 2001. On February 6, 2001, Peel filed a motion for new trial. On March 2, 2001, the district court vacated the jury's verdict and granted Peel's motion for new trial. On March 8, 2001, the State appealed the district court's ruling. Peel was released on bond on June 1, 2001. He apparently returned to his home state of Texas where he was on parole or probation.

On May 15, 2002, this court reversed the district court's grant of Peel's motion for new trial and remanded for reinstatement of the jury verdict and sentencing. Procedendo issued on August 13, 2002. The district court issued an arrest warrant and set bond on August 15, 2002.

At the time, Peel was in the custody of the state of Texas either serving a sentence for violation of Texas parole or probation or pending hearing on an application for revocation of parole or probation. On March 24, 2004, the Story County Attorney was informed that Peel had been released from custody by Texas authorities despite the Iowa warrant. Peel failed to appear in Iowa for sentencing on May 17, 2004. The district court issued another arrest warrant and re-set bond on May 18, 2004.

About ten months later, Peel was arrested in Texas on new charges and held in the Dallas County jail. He was sentenced in Texas on May 19, 2005, and

was again incarcerated in a Texas prison, apparently a federal facility, subject to the warrant from Iowa.

Peel was released from prison in Texas and transported to Iowa in December 2007. At his sentencing on January 28, 2008, Peel asked to receive credit for the time served pending disposition of his offense, including time he had been detained in Texas. The district court sentenced Peel and issued a separate order detailing the credit Peel would get for time served in custody. On January 31, 2008, the district court denied Peel's request for credit for the periods of time Peel was detained in Texas. The court gave Peel credit only for the days he was incarcerated in Iowa from November 2000 to June 2001 and again from December 2007 to January 2008.

Peel appeals from the district court's order denying him credit for presentence time, arguing: (1) he did not receive credit for all time served in connection with his offense, and (2) his counsel was ineffective in relying on the wrong portion of the Iowa Code in arguing for Peel to receive credit for time served in Texas.

II. Credit for Time Incarcerated in Texas While Receiving Credit on a Texas Sentence

"[A]n inmate may receive credit upon the inmate's sentence while incarcerated in an institution or jail of another jurisdiction during any period of time the person is receiving credit upon a sentence of that other jurisdiction." 2000 Iowa Acts ch. 1204, § 1 (codified at Iowa Code § 903A.5 (2001)). This statute gives the district court the discretion to give Peel credit for time served in Texas. *Thompson v. City of Des Moines*, 564 N.W.2d 839, 845 (Iowa 1997)

(noting that “may” is discretionary, not directory like “shall” or “must”). We will not reverse the district court’s decision absent an abuse of discretion. *State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998).

We find the district court did not abuse its discretion in declining to award credit to Peel for time he was incarcerated in Texas and receiving credit upon a Texas sentence. When Peel was given the opportunity to argue on his behalf at sentencing, he expressed little acceptance of, or remorse for, his actions. He stated that he “[hadn’t] ever done anything.” He further asserted that if he were forced to spend more time in an institution, “it would probably mess [him] up.” Further, Peel’s extensive and consistent criminal background contradicts his claim of rehabilitation. Peel was on probation for charges in Texas when he was arrested on the robbery charges in this case. After being released on bail in this case, Peel returned to Texas where he was arrested and imprisoned twice. The district court properly exercised its discretion in declining to credit Peel for time served in Texas for which he was receiving credit upon a Texas sentence.

III. Credit for Presentence Time Served in Texas

Though Peel is not entitled to credit for time served while receiving credit on a Texas sentence, he is entitled to mandatory credit for presentence time served in Texas.

“[I]f an inmate was confined to a county jail or other correctional . . . facility at any time prior to sentencing . . . because of failure to furnish bail . . . the inmate shall be given credit for the days already served upon the term of the sentence.”

Iowa Code § 903A.5 (1999).

This court recently considered a similar argument in *Powell v. State*, 766 N.W.2d 259 (Iowa Ct. App. 2008). In *Powell*, this court determined a defendant is entitled to credit for presentence incarceration because of failure to furnish bail. *Id.* at 263. Credit begins on the date the arrest warrant was issued and bond was set in the charging county. *Id.* Therefore, Peel is entitled to credit for presentence time served in Texas beginning on the date he was in custody after the arrest warrant was issued and ending on the date Peel began serving a Texas sentence.

The record is unclear as to the dates when Peel was incarcerated pre-sentence and post-sentence in Texas. We therefore remand to the district court for further proceedings to determine the amount of time Peel was incarcerated presentence in Texas and under the Iowa warrant. Peel shall receive credit for this time on his Iowa sentence. We affirm the district court's decision not to award Peel credit for time served in Texas during which he was receiving credit upon a Texas sentence.

Because we find Peel is entitled to credit for presentence confinement pursuant to the first unnumbered paragraph of 903A.5, we decline to address his argument of ineffective assistance of counsel.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.