

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CALVIN LAMONT SMITH,
Appellant.

No. 2 CA-CR 2013-0208
Filed January 10, 2014

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Cochise County

No. CR201100610

The Honorable Karl D. Elledge, Judge

AFFIRMED AS MODIFIED

COUNSEL

Thomas C. Horne, Arizona Attorney General
By Joseph T. Maziarz, Section Chief Counsel
and Eliza C. Ybarra, Assistant Attorney General, Phoenix
Counsel for Appellee

Joel Larson, Cochise County Legal Defender
By Bethany Graham, Assistant Legal Defender, Bisbee
Counsel for Appellant

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MEMORANDUM DECISION

Chief Judge Howard authored the decision of the Court, in which Presiding Judge Vasquez and Judge Miller concurred.

H O W A R D, Chief Judge:

¶1 Calvin Smith appeals from the sentences imposed after the trial court revoked his probation. He asserts the trial court incorrectly calculated his presentence incarceration credit. We agree, and affirm his sentences as modified.

¶2 Smith pled guilty to attempted shoplifting and attempted second-degree burglary and was placed on concurrent terms of probation, the longer of which was four years. The court included as a condition of probation that Smith serve consecutive jail terms of two days for attempted shoplifting and four days for attempted second-degree burglary, consisting of “three weekends.” The state filed a petition to revoke his probation in June 2012 and, after Smith admitted violating his probation terms, the court placed him on intensive probation. Pursuant to a second petition to revoke Smith’s probation filed in February 2013, the court found Smith had violated the terms and conditions of his probation, revoked both terms of probation, and sentenced him to concurrent prison terms, the longer of which is 2.5 years. The court applied 149 days of presentence incarceration credit to each sentence. This timely appeal followed.

¶3 Smith’s sole argument on appeal is that the trial court relied on an inaccurate predisposition memorandum in determining his presentence incarceration credit. He asserts the court thus omitted six days he had spent incarcerated as a condition of probation and did not account for the fifteen days he had spent incarcerated when the court continued the revocation hearing for the first petition to revoke. Thus, he claims, he is entitled to 166 days of

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credit for attempted shoplifting and 168 days of credit for attempted burglary.

¶4 A defendant is entitled to credit for presentence incarceration for any 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). “Custody” begins “when a defendant is booked into a detention facility.” *State v. Carnegie*, 174 Ariz. 452, 454, 850 P.2d 690, 692 (App. 1993). Although Smith did not object below, a trial court’s failure to grant full credit for presentence incarceration constitutes fundamental error. *See State v. Ritch*, 160 Ariz. 495, 498, 774 P.2d 234, 237 (App. 1989).

¶5 The state agrees that Smith’s presentence incarceration credit was incorrectly calculated but disagrees with his calculation, asserting Smith is entitled to 168 days of credit against his sentence for attempted shoplifting and 173 days against his sentence for attempted burglary. We agree with the state’s calculation. Smith was incarcerated for two days stemming from his arrest for attempted shoplifting. For attempted burglary, he was incarcerated for four days following his arrest for that offense. And he was ordered to serve three weekends in jail as a condition of probation; he accrued three days of incarceration credit for each weekend because he reported in on a Saturday and was released on a Monday. Six of those days apply to his sentence for attempted burglary and three apply to his sentence for attempted shoplifting.

¶6 He also was jailed for a total six days in April 2012 as a sanction for violating his probation,¹ and for seventy-two days from June 25 to September 4 pursuant to the state’s first petition to revoke. Finally, he was jailed for four days in January 2013 as a probation sanction and for eighty-one days pursuant to the state’s second petition to revoke from February 8 to April 30.

¹The trial court deferred thirty days of incarceration to apply as a sanction for probation violations.

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¶7 Accordingly, we modify Smith's sentence to reflect 168 days of presentence incarceration credit for attempted shoplifting, and 173 days for attempted burglary. We otherwise affirm the revocation of his probation and the sentences imposed.