

Circuit Court for Baltimore County
Case No. 03-K-13-005889

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2528

September Term, 2017

MATTHEW ROBERT KIRBY

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 7, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Matthew Robert Kirby noted an appeal from an order of the Circuit Court for Baltimore County denying his motion to correct an illegal sentence. For the reasons stated below, we shall remand the case for further proceedings.

Kirby pleaded guilty to robbery and was sentenced to 10 years, all but time served suspended, and three years of probation. He subsequently violated the terms of his probation on two occasions. On the first violation, the court continued appellant on probation. Upon his second violation of probation, the court ordered execution of the previously suspended sentence, stating that Kirby would get credit for any time he had served, although the court did not state how many days of credit Kirby was entitled to. The commitment record indicates that “defendant has been awarded 102 days credit for time served[.]”

On December 26, 2017, Kirby filed a motion to correct an illegal sentence, claiming that he was entitled to 252 days of credit. The court denied the motion without a hearing, noting that the “credits were properly calculated.”

An error in calculating credit for time served does not amount to an illegal sentence. *Howsare v. State*, 185 Md. App. 369, 398 (2009). The proper remedy for such a claim is to file a motion to correct the commitment order. *Id.* See also Md. Rule 4-351. As it appears that the court essentially treated Kirby’s motion to correct an illegal sentence as a motion to correct the commitment order, we shall do the same.

The State concedes that Kirby is entitled to credit for the time he spent in custody on the robbery charge prior to the guilty plea, which, according to the record, was 225 days. The State further concedes that Kirby is also entitled to credit for the time he spent in

custody after being arrested for the first violation of probation, but asserts that, because the record does not show when Kirby was arrested for that violation, that credit cannot be calculated. Accordingly, we remand the case for a hearing and a determination of whether the amount of credit indicated on the commitment record dated December 2, 2014 is correct.

**CASE REMANDED, WITHOUT
AFFIRMANCE OR REVERSAL, FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY BALTIMORE COUNTY.**