

**IN THE COURT OF APPEALS OF IOWA**

No. 1-302 / 10-1219  
Filed May 25, 2011

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**LEONARD RAY PEEL,**  
Defendant-Appellant.

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

Leonard Ray Peel appeals from an order granting eight days against his  
Iowa sentence, based on the time he was in custody in Texas but not receiving  
credit against his Texas sentences. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant  
Appellate Defender, for appellant.

Leonard Ray Peel, Fort Madison, pro se.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney  
General, Stephen Holmes, County Attorney, and Timothy Meals and Sarah  
Livingston, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Potterfield and Doyle, JJ. Tabor, J.,  
takes no part.

**DOYLE, J.**

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. *State v. Peel*, No. 01-0371 (Iowa Ct. App. May 15, 2002). 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 appealed from the district court's order denying him credit for presentence time. This court held 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. *State v. Peel*, No. 08-0327 (Iowa Ct. App. July 22, 2009). Further, this court held that under section 903A.5, Peel was entitled to mandatory credit for presentence time served in Texas. *Id.* at \*2 (citing *Powell v. State*, 766 N.W.2d 259, 263 (Iowa Ct. App. 2008)). Since the record before this court was unclear, the case was remanded 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 was to receive credit for this time on his Iowa sentence, but was not to receive credit for time served in Texas during which he was receiving credit upon a Texas sentence. Peel's application for further review of the court of appeals opinion was denied by our

supreme court on September 16, 2009, and procedendo was issued two days later.

Upon remand, a hearing was held in the district court on December 21, 2009. In its May 26, 2010 order, the court found:

Based on the evidence introduced here, the court determines that the defendant is entitled to credit for time served only when he was in custody in Texas awaiting Iowa authorities to retrieve him after he had finished serving his second term of incarceration in Texas (on a non-Iowa charge). This term of incarceration expired on December 5, 2007, at which time he was held pursuant to an Iowa arrest warrant. Defendant immediately waived extradition to Iowa. The Iowa authorities picked up the defendant on December 10, 2007, and he was returned to the Story County jail on December 12, 2007. Thereafter, he was sentenced on January 28, 2008, transported to prison on January 10, 2008.

The district court ordered that Peel was entitled to credit for time served from December 5, 2007, until January 30, 2008. After Peel's post-hearing motions were denied, he appealed.

On appeal, Peel argues this court erred in holding he "could not get credit for time served in Texas, while receiving credit for that same time, for a Texas sentence." This is not the proper forum for Peel to rehash the same argument he previously made to our court. He lost that argument and his petition for further review was denied by our supreme court. Our July 22, 2009 opinion stands as the law of this case. See *United Fire & Cas. Co. v. Iowa Dist. Ct.*, 612 N.W.2d 101, 103 (Iowa 2000) ("It is a familiar legal principle that an appellate decision becomes the law of the case and is controlling on both the trial court and on any further appeals in the same case."). We therefore reject Peel's argument on this point.

The record before us does not show any period, before December 5, 2007, when Peel was in custody in Texas pursuant to an Iowa arrest warrant but not receiving credit for time served against his Texas sentences. The district court therefore correctly found Peel was entitled to credit for the eight days which elapsed between December 5 and December 12, 2007, when Peel was returned to the Story County jail.

Peel claims there was a detainer on file against him from March 3, 2005, to December 10, 2007, while he was in custody in Texas and that he applied to be transported to Iowa for sentencing in May 2005 and again in August 2005. He argues the State failed to bring him to Iowa for final disposition of his case within the 180-day period following his applications, as purportedly required by section 821.1(3) (Agreement on Detainers Compact). Setting aside a serious error preservation issue, we find Peel's reliance on the agreement is misplaced for it applies only when there is an "untried indictment, information or complaint on the basis of which a detainer has been lodged against [a] prisoner . . . ." Iowa Code § 821.1(3)(a). The warrants for Peel's arrest, which served as the "detainers" in this case, were not based on any "untried indictment, information or complaint." Peel had already been tried and found guilty by a jury in 2001. The arrest warrants were based upon Peel's failure to appear for sentencing. Since the detainer act does not apply to Peel's situation, we reject his argument.

Peel complains he was "not allowed to attend his sentencing hearing on remand." He was incarcerated at the time. The district court did provide that Peel be allowed to participate by phone, but that did not happen. The record does not reflect why. The court proceeded with the hearing and directed Peel's

counsel to determine whether Peel waived his presence, and if not, then the hearing could be reconvened “to hear what he has to say.” Peel’s counsel was directed to file a waiver of presence or objection. The court again assured Peel’s counsel that if Peel objected, the hearing could be reconvened. No waiver or objection was ever filed. After the district court entered its order concerning the credit to be given against Peel’s sentence, Peel’s counsel filed a motion to reconsider. The motion was denied and Peel’s counsel filed a motion to amend pursuant to Iowa Rule of Civil Procedure 1.904(2), which was also denied. No mention was made of a waiver or objection in either post-hearing motion. On appeal, Peel states he did not waive his presence at the hearing and “would have very much liked to have attended [the] hearing.” Peel asserts the hearing was therefore invalid. Peel makes no claim that he and his counsel did not discuss, after the hearing, the issue of whether he waived presence or had any objection.

Again, setting aside a serious preservation of error issue, we find Peel’s complaint unfounded. To be sure, Iowa Rule of Criminal Procedure 2.27(1) requires a felony defendant’s presence at every stage of the trial, including sentencing, except as otherwise provided by the rule. Peel misconstrues the nature of the hearing on remand. He was sentenced on January 28, 2008, and he was personally present. The hearing at issue was held on December 21, 2009, for the purpose of determining the amount of time to be credited against Peel’s sentence based on the time he was in custody in Texas but not receiving credit against a Texas sentence.

Iowa Rule of Criminal Procedure 2.27(3)(b) provides a defendant need not be present “at a reduction of sentence under rule 2.24.” Motions to correct a

sentence fall within the rule 2.24. Iowa R. Crim. P. 2.24(1). Clearly, the lack of Peel's presence at the December 21, 2009 hearing did not invalidate those proceedings. Peel lodged no post-hearing complaint with the district court concerning the lack of his presence at the hearing. We believe the trial court acted appropriately under the circumstance and did not abuse its discretion in entering its May 26, 2010 order crediting Peel with eight days against his sentence.

For all the above reasons, we affirm the district court's order granting Peel eight days credit against his Iowa sentence, based on the time he was in custody in Texas but not receiving credit against his Texas sentences.

**AFFIRMED.**