

IN THE COURT OF APPEALS OF IOWA

No. 0-438 / 09-1864
Filed July 28, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EDDIE HUBERT SAPP,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Colin J. Witt, District Associate Judge.

Eddie Sapp argues he was denied his due process right to a hearing.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael A. Salvner, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

VOGEL, P.J.

Eddie Sapp claims he was denied his due process right to a hearing when the district court entered orders which he asserts took away credit for time served on the first of two jail sentences. Because the final order does give him credit for time served on his aggregate sentence, we affirm.¹

Our review of an alleged violation of constitutional rights is de novo. *Bruns v. State*, 503 N.W.2d 607, 609 (Iowa 1993).

On July 23, 2009, Sapp pled guilty to domestic abuse assault causing bodily injury in violation of Iowa Code section 708.2A(2)(B) (2009). He was sentenced to 365 days of incarceration, with all but fourteen days suspended, and placed on one year of probation. A no-contact order was also entered pursuant to Iowa Code section 664A.5. Sapp was arrested on August 7, 2009, and charged with violation of the no-contact order, and held in jail in lieu of bond. The State also filed an application to revoke Sapp's probation.

On September 3, Sapp stipulated to having violated the no-contact order. The Honorable Gregory D. Brandt found Sapp to be in contempt and sentenced him to ninety days in jail with credit "given for any days previously served." At that point, Sapp had been in jail for twenty-seven days, since his August 7 arrest.

¹ In Sapp's November 25, 2009 letter to the district court, he wrote that he lost credit for days served "without a hearing, without being informed, and without the chance to speak on my own behalf." While we agree with the State that Sapp did not properly raise his claim, the district court considered the claim, and issued a ruling such that we will proceed to the merits. See *State v. Pickett*, 671 N.W.2d 866, 869 (Iowa 2003) (explaining that when it's clear the district court understood and considered the issue at trial, or there is adequate record for purposes of our review, we will proceed to the merits of the claimed error); see, e.g., *Folkers v. Britt*, 457 N.W.2d 578, 580 (Iowa 1990) (explaining that when an action is not properly raised in the pleadings, but the parties proceed to try an issue, it is generally deemed to have been properly raised).

On September 8, the Honorable Colin J. Witt revoked Sapp's probation and sentenced him to sixty days in the Polk County jail, with "credit for all days served" "consecutive to VNCO (violation of no-contact order) [] due to nature, offense & criminal history." On November 13, Judge Witt entered an order clarifying that his September 8 order granting credit for "all days served" was in error and added, "[T]he court intended that Mr. Sapp would not have any credit for days served and the 60 days in the PV would not begin to run until the 90 days on the VNCO was complete." "[E]rrors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders." *State v. Suchanek*, 326 N.W.2d 263, 265 (Iowa 1982). Following an inquiry from Sapp, Judge Witt issued the next order stating:

To clarify, for Mr. Sapp, his attorney and Polk County Jail—Mr. Sapp was ordered to do 90 days by Judge Brandt on a VNCO, 60 days CONSECUTIVE by the undersigned (J. Witt) for PV, for a total of 150 days. Mr. Sapp shall be given credit for all days served on the total 150 day sentence.

Sapp argues "the November orders" deleted thirty-three days of time served from his sentence, without his first receiving a hearing.² As the State asserts, the court did not take from Sapp any credit for days served. We agree, as the confusion stemming from the various orders was put to rest in the November 25 final order, specifically stating, "Mr. Sapp shall be given credit for all days served on the total 150 day

² In the November 13 order, the court specified "Defendant was sentenced on 9/3/09 by Judge Brandt for a VNCO, one count from 8/7/09. Defendant on that day was sentenced to ninety (90) days with credit for twenty-seven (27) days." It appears Sapp calculated thirty-three days starting with the August 7 violation through the September 8 probation order, whereas the court calculated twenty-seven days from August 7 through the September 3 VNCO sentencing order, as stated in the November 13 order. Sapp is not entitled to credit from September 3 to September 8 because he was no longer confined for failing to post bond but rather was confined during that time due to the contempt punishment. See *State v. Johnson*, 167 N.W.2d 696, 701 (Iowa 1969); Iowa Code §§ 903A.5(1), 901.6.

sentence.” Sapp’s argument that he was denied his right to a hearing before the subsequent clarifying orders were entered has no merit, as the court may correct its previous orders in the nature of a nunc pro tunc order without hearing. *State v. Johnson*, 744 N.W.2d 646, 648 (Iowa 2008). Sapp was credited in the November 25 order for all the time he served (twenty-seven days) on his aggregate jail sentences. The court’s corrective orders did not change his sentence nor did they otherwise prejudice him. Therefore, we affirm.

AFFIRMED.