

NOTICE

Decision filed 03/04/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0500

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<p><i>In re</i> WILLIAM R., JR., an Alleged Delinquent Minor</p> <p>(The People of the State of Illinois,</p> <p style="padding-left: 40px;">Petitioner-Appellee,</p> <p>v.</p> <p>William R., Jr.,</p> <p style="padding-left: 40px;">Respondent-Appellant).</p>	<p>)</p>	<p>Appeal from the Circuit Court of Madison County.</p> <p>No. 07-JD-452</p> <p>Honorable Duane L. Bailey, Judge, presiding.</p>
---	---	--

JUSTICE DONOVAN delivered the judgment of the court.
Justices Welch and Spomer concurred in the judgment.

RULE 23 ORDER

Held: The appellate court is without jurisdiction to consider the minor's allegation that his admission to a delinquency petition was void for a lack of proper admonishments where the minor did not perfect his claim for appeal in accordance with Supreme Court Rule 604(d) (eff. July 1, 2006) and *In re J.T.*, 221 Ill. 2d 338, 851 N.E.2d 1 (2006). The sentencing order is proper, but the minor is entitled to a credit of 91 days for time served in pretrial detention.

The minor, William R., Jr., admitted to a battery charge and he was adjudicated a delinquent minor by the circuit court of Madison County. After failing to comply with rules of court supervision, and then rules of probation, William was committed to the Illinois Department of Juvenile Justice for an indeterminate period, not to exceed (a) the period for which an adult could be committed for the same act or (b) the minor's twenty-first birthday, whichever occurred first. On appeal, William contends that his admission to the battery charge should be vacated because during the plea hearing the trial court did not give proper admonishments about the consequences of his admission and did not ascertain whether his

admission was knowing and voluntary. William also contends that the trial court was without authority to commit him to the Illinois Department of Juvenile Justice for an indeterminate period and that the court failed to grant him a credit of 134 days for pretrial detention. For the reasons that follow, the judgment is affirmed as modified.

William was charged with a battery (720 ILCS 5/12-3(a)(1) (West 2008)), in a juvenile petition filed in the circuit court of Madison County pursuant to the Juvenile Court Act of 1987 (705 ILCS 405/1-1 *et seq.* (West 2008)). During a hearing, William signed a written admission to the battery charge. The trial court placed William under rules of supervision for one year and instructed him that the case would be dismissed if he completed the period of supervision without a violation of the rules of supervision. Approximately 10 months later, the State filed a petition to revoke the supervision order. Based on stipulated facts, the trial court found that William had violated some of the rules of supervision. The court revoked the supervision order and sentenced William to three years' probation. Two months later, the State filed a petition to revoke the probation. Based on stipulated facts, the court found that William had violated some of the rules of probation, and it revoked the probation order. The court committed William to the Illinois Department of Juvenile Justice "for an indeterminate period as provided in 705 ILCS 405/5-750 (1), (3), and (5), not to exceed (a) the period for which an adult could be committed for the same act[] or (b) the minor's 21st birthday, whichever occurs first." William filed a motion to reconsider the commitment order. The motion was denied. This appeal followed.

In the first point in the appellant's brief, William claimed that his admission to the original battery charge should be vacated because the trial court did not properly admonish him about the consequences of his admission and did not ascertain whether his admission was knowing and voluntary.

After reviewing the parties' briefs and the record on appeal, and prior to taking the

case under advisement as a nonoral case, this court, on its own motion, issued an order directing William to show cause why his first point on appeal should not be stricken for a lack of jurisdiction because the point was not preserved for appellate review. The State was provided an opportunity to reply to the minor's response. The parties' submissions were taken with the case. After considering the submissions of the parties, we have concluded that we lack jurisdiction because William's first point was not properly preserved for review in accordance with Supreme Court Rule 604(d) (eff. July 1, 2006) and *In re J.T.*, 221 Ill. 2d 338, 851 N.E.2d 1 (2006).

Supreme Court Rule 604(d) provides in pertinent part that no appeal from a judgment entered on guilty plea shall be taken unless the defendant, within 30 days of the imposition of the sentence, files a motion to reconsider the sentence or a motion to withdraw the guilty plea and to vacate the judgment. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). In this case, after William provided a written admission, the trial court entered an order placing him on supervision for a period of one year. Subsequently, the court revoked the supervision order because of rules violations, found that William should be made a ward of the court, and sentenced William to three years of probation. The order of probation was a final, appealable dispositional order. *In re J.N.*, 91 Ill. 2d 122, 128-29, 435 N.E.2d 473, 476 (1982). William did not file a Rule 604(d) motion to reconsider either the supervision order or the order sentencing him to probation. He did not file a timely notice of appeal for either order under Supreme Court Rule 606(a) (eff. Mar. 20, 2009). He did not seek leave to file a late notice of appeal pursuant to Supreme Court Rule 606(c) (eff. Mar. 20, 2009). According to the record, William first presented his challenge to his guilty plea more than a year after he had entered it, and only after he was committed to the Illinois Department of Juvenile Justice. Consequently, this court lacks jurisdiction to consider any issue arising from the plea proceedings. See *In re J.T.*, 221 Ill. 2d at 347-48, 851 N.E.2d at 6. The first point in

William's appellate brief is hereby stricken for a lack of jurisdiction.

William next argues that the trial court was without authority to sentence him to the Illinois Department of Corrections, Juvenile Division, until his twenty-first birthday, a period of six years, where the maximum term of confinement for a Class A misdemeanor is 364 days.

Section 5-710(7) of the Juvenile Court Act of 1987 provides, "In no event shall a guilty minor be committed to the Department of Juvenile Justice for a period of time in excess of that period for which an adult could be committed for the same act." 705 ILCS 405/5-710(7) (West 2006). The sentencing order at issue, dated July 10, 2009, specifically states that the minor is committed to the Illinois Department of Juvenile Justice "for an indeterminate period as provided in 705 ILCS 405/5-750 (1), (3), and (5), not to exceed (a) that period for which an adult could be committed for the same act[] or (b) the minor's 21st birthday, whichever occurs first." The maximum term of confinement for a Class A misdemeanor is 364 days. 730 ILCS 5/5-4.5-55(a) (West 2006). William was 15 years old on the date of the sentencing and therefore almost six years shy of his twenty-first birthday. Under a plain reading of the sentencing order, provision (a) applies because the maximum term for which an adult could be committed for the Class A misdemeanor, 364 days, would occur before William would reach his twenty-first birthday. Thus, the trial court was within its authority to commit William to the Department of Juvenile Justice for an indeterminate period, and the order is proper. The point is without merit.

Finally, William contends that he is entitled to a credit of 134 days for the time he served in pretrial detention. The State concedes that William is entitled to a credit for time spent in pretrial detention, but it does not agree that William is entitled to a credit of 134 days. The State has calculated a total credit of 91 days, and it has provided references to the record to support its calculation. Conversely, William has not shown his work. He has not

provided any facts or references to the record to support his claim of 134 days of credit. After reviewing the record, we find that William is entitled to a credit of 91 days for the period he spent in pretrial detention.

Pursuant to Supreme Court Rule 366(a), a reviewing court has discretionary authority to exercise any and all of the powers of amendment of the trial court and to enter any judgment or make any order that ought to have been given or made. Ill. S. Ct. R. 366(a) (eff. Feb. 1, 1994). Accordingly, the judgment entered July 10, 2008, is hereby modified to provide that William is entitled to a credit of 91 days for time served in pretrial detention. In all other respects, the judgment is affirmed.

Affirmed as modified.