

NOTICE
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2012 IL App (4th) 110349-U

Filed 3/16/12

NO. 4-11-0349

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Morgan County
KAYLA J. FRANCIS,)	No. 06JD14
Defendant-Appellant.)	
)	Honorable
)	Richard T. Mitchell,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices McCullough and Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant spent time in juvenile detention and jail prior to sentencing, she was entitled to an additional 175 days of sentence credit.
- ¶ 2 In November 2006, defendant, Kayla J. Francis, pleaded guilty in juvenile court to voluntary manslaughter of an unborn child and three counts of aggravated battery. In the extended jurisdiction juvenile proceedings, the trial court sentenced her to five years' juvenile probation, along with a stayed adult term of 12 years in prison. In November 2010, the State filed a petition to revoke the stay of defendant's adult sentence. In February 2011, the court lifted the stay and sentenced her to 12 years in prison.
- ¶ 3 On appeal, defendant argues she is entitled to credit for time served in juvenile detention and jail prior to sentencing. We affirm as modified and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In August 2006, the State filed a supplemental petition for adjudication of wardship, alleging defendant, born in June 1990, was a delinquent minor. The petition alleged defendant committed the offense of intentional homicide of an unborn child (720 ILCS 5/9-1.2(a)(2) (West 2006)), claiming she knew Ashliegh Fredericks was pregnant and, without lawful justification and with the knowledge that her acts created a strong probability of great bodily harm to Fredericks, ran over her with a car, thereby causing the death of Fredericks' unborn child. The petition also alleged defendant committed the offenses of aggravated battery (720 ILCS 5/12-4 (West 2006)) against Fredericks (two counts), Meltara Childs (one count), and Skiya Finkle (one count). The trial court found probable cause to believe defendant was a delinquent minor and it was a matter of immediate and urgent necessity that she be detained.

¶ 6 On November 2, 2006, the State filed a motion to transfer from juvenile court and to permit prosecution of defendant under the criminal laws. The State also filed a motion to designate the matter as an extended jurisdiction juvenile proceeding (705 ILCS 405/5-810 (West 2006)).

¶ 7 On November 27, 2006, the State filed a second supplemental petition for adjudication of wardship, charging the additional offense of voluntary manslaughter of an unborn child (720 ILCS 5/9-2.1(a) (West 2006)). On that same date, defendant entered into a plea agreement for both a juvenile and an adult sentence. She pleaded guilty to three counts of aggravated battery and one count of voluntary manslaughter of an unborn child.

¶ 8 As part of her juvenile sentence, defendant agreed to five years' probation, house arrest for the duration of the school year, and 30 days' detention with credit for 30 days served. She was also ordered to have no contact with the victim and to comply with all other terms in the

juvenile order of probation. Defendant's adult sentence, which would be stayed as long as she remained compliant with juvenile probation, was 12 years in prison for the offense of voluntary manslaughter of an unborn child and 180 days in jail for the three counts of aggravated battery. The parties agreed defendant would be given credit for time already served in detention.

¶ 9 In November 2010, the State filed a petition to revoke the stay of defendant's previously imposed adult criminal sentence. The State alleged defendant had on numerous occasions made contact with the victims in this case. In particular, the State alleged defendant contacted Fredericks by text message and then threw a shoe at her when Fredericks came over to defendant's residence. The State alleged defendant committed the offenses of criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)) and endangering the life or health of a child (720 ILCS 5/12-21.6(a) (West 2010) (two counts)).

¶ 10 In February 2011, the trial court held a hearing on the petition to revoke. Witnesses were heard and arguments given. The court found defendant had made contact with Fredericks. Moreover, the court found by a preponderance of the evidence that defendant endangered the life of a child and criminally damaged property. The court lifted the stay and ordered defendant serve the 12-year prison sentence. The sentencing order indicated defendant was required to serve 85% of her sentence. In April 2011, this court allowed defendant's *pro se* motion for leave to file a late notice of appeal.

¶ 11 II. ANALYSIS

¶ 12 On appeal, defendant argues she is entitled to 175 days' credit for time served in juvenile detention and jail prior to her sentencing. The State concedes she is entitled to 172 days' credit but claims the record does not show she served any other time.

¶ 13 Section 5-8-7(b) of the Unified Code of Corrections (730 ILCS 5/5-8-7(b) (West 2006)) provides an offender shall be given credit on his sentence "for time spent in custody as a result of the offense for which the sentence was imposed." A "defendant is entitled to one day of credit for each day (or portion thereof) that he spends in custody prior to sentencing, including the day he was taken into custody." *People v. Ligonis*, 325 Ill. App. 3d 753, 759, 759 N.E.2d 169, 174 (2001).

¶ 14 In the case *sub judice*, defendant was detained on June 9, 2006, and held in detention until her plea on November 27, 2006. As part of her plea agreement, she was given credit for time served against her possible adult sentence. When the stay was lifted and her adult sentence imposed, she was not given any sentence credit. As the State concedes, defendant is entitled to sentence credit from June 9, 2006, to November 27, 2006, which amounts to 172 days.

¶ 15 Defendant also argues she is entitled to sentence credit for time spent in custody between her arrest on October 24, 2010, and her release on October 26, 2010. The State disagrees, contending the prosecution did not petition to revoke the stay of her adult sentence until November 17, 2010. Thus, the State argues she could only receive credit for time spent in custody on or after that date.

¶ 16 Section 5-8-7(c) of the Unified Code of Corrections states as follows:

"An offender arrested on one charge and prosecuted on another charge for conduct which occurred prior to his arrest shall be given credit on the determinate sentence or maximum term and the minimum term of imprisonment for time spent in custody under the former charge not credited against another sentence."

730 ILCS 5/5-8-7(c) (West 2006).

Our supreme court has noted once a defendant is arrested on a violation of a bail bond charge he is in custody for that offense even before he is formally charged. *People v. Roberson*, 212 Ill. 2d 430, 439, 819 N.E.2d 761, 766 (2004). Here, defendant was arrested for child endangerment and criminal damage to property. A petition to revoke the stay of her adult sentence was filed based on her alleged commission of these offenses, which were not prosecuted after she was found in violation of her probation. "To deny a defendant credit for time served while in custody runs afoul of our legislature's specific intent of entitling an offender to sentence credit for *all* time served in confinement." (Emphasis in original.) *People v. Hernandez*, 345 Ill. App. 3d 163, 169, 803 N.E.2d 577, 581 (2004). As defendant did not receive three days' credit for any other offense, we find she is entitled to the credit for the time spent in custody following her arrest.

¶ 17

III. CONCLUSION

¶ 18 For the reasons stated, we affirm as modified to reflect 175 additional days of sentence credit, and we remand for issuance of an amended judgment of sentence so reflecting.

¶ 19 Affirmed as modified; cause remanded with directions.