

No. 1-12-3152

**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).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN THE INTEREST OF NELSON M., a minor,	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS	)	Cook County.
	)	
Petitioner-Appellee,	)	No. 11 JD 3093
	)	
v.	)	Honorable
	)	Stuart F. Lubin,
NELSON M., a minor,	)	Judge Presiding.
	)	
Respondent-Appellant.)	)	
	)	

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JUSTICE REYES delivered the judgment of the court.  
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

**ORDER**

¶1 *Held:* The matter is remanded for resentencing regarding whether respondent is entitled to sentencing credit for time spent at two residential treatment facilities as a condition of his probation and for correction of the mittimus to reflect a sentence credit of 195 days for time served in predisposition custody.

¶2 After finding respondent minor Nelson M. violated the terms of his probation, the trial court committed respondent to the Illinois Department of Juvenile Justice (DJJ) for an indeterminate term not to exceed three years for the offense of criminal sexual abuse. The trial

court granted respondent credit of 163 days for time served in predisposition custody. On appeal, respondent contends he is entitled to 418 days credit for time served; 195 days for time served in predisposition custody and 223 days for time served in two residential treatment facilities as a condition of his probation. The State agrees that respondent should be credited 195 days for time served in pre-sentence custody.

¶3 For the reasons which follow, we conclude respondent is entitled to 195 days credit for time spent in predisposition custody and remand with directions to correct the mittimus.

Additionally, we remand the matter to the trial court for a determination of whether respondent should receive credit for time spent in two residential treatment facilities.

¶4 **BACKGROUND**

¶5 On July 18, 2011, the State filed a petition for adjudication of wardship, alleging respondent committed numerous offenses including criminal sexual abuse in violation of section 11-5(a)(1) of the Criminal Code of 1963 (720 ILCS 5/11-5(a)(1) (West 2010)). Respondent had already been placed in custody in the Cook County Juvenile Detention Center (CCJDC) on July 15, 2011.<sup>1</sup>

¶6 On November 1, 2011, respondent entered a plea of guilty to criminal sexual abuse (720 ILCS 5/11-5(a)(1) (West 2010)).<sup>2</sup> The plea agreement provided that respondent be committed to the Department of Children and Family Services (DCFS) and that he complete the inpatient Juvenile Sex Offender Program (JSOP).

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<sup>1</sup> On August 24, 2011, the State filed an amended petition for adjudication of wardship. The amended petition contained one count of aggravated criminal sexual assault, one count of criminal sexual assault, two counts of aggravated criminal sexual abuse, two counts of criminal sexual abuse, and one count of battery. The record does not indicate whether the State was granted leave to file the amended petition.

<sup>2</sup> The remainder of the counts were either dismissed by *nolle prosequi* or stricken with leave to reinstate.

¶7 On November 22, 2011, a detention hearing was held. Probation officer Maria Tejada (Tejada) presented the trial court with a supplemental social investigation report, which indicated respondent had spent 131 days in detention, from July 15, 2011, to November 22, 2011.<sup>3</sup> The trial court adjudicated respondent a ward of the court and sentenced him to 36 months of probation with the following conditions:

"30 days time considered served, having been served—he's been in custody way more than that—DNA is mandatory, fees are waived on that, probation fees are also waived, no contact with the witnesses, defendant commit[ed] to Department of Children & Family Services \* \* \* defendant to cooperate with and successfully complete inpatient JSO program, as well as any aftercare that is recommended right now."

The probation order specified that respondent was to "successfully complete residential placement - JSO & any aftercare services, commit to DCFS \* \* \*." The court released respondent to his parents' custody until he could be placed in a residential treatment facility.

¶8 On December 13, 2011, the State filed a petition for supplemental relief alleging respondent violated his probation by leaving his residence without permission and not returning home. On that same day, the trial court ordered that respondent be held in custody for one week, until December 20, 2011.

¶9 On December 21, 2011, respondent was placed in a residential treatment facility, the Alternative Behavior Treatment Centers (ABTC). The State subsequently withdrew its petition for supplemental relief. On April 23, 2012, respondent was transferred to Indian Oaks Academy, another residential treatment facility, due to the fact ABTC closed.

¶10 On July 31, 2012, the State filed a petition to revoke respondent's probation, alleging

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<sup>3</sup> The supplemental social investigation report did not indicate where respondent was detained for 131 days.

respondent violated the terms of his probation and that he was on " 'runaway/missing' status" from Indian Oaks Academy on June 19, June 25, June 28, July 1, July 4, and July 21 of 2012.

The trial court ordered respondent be held in custody at CCJDC until the next court date.

¶11 On August 14, 2012, the parties stipulated that if called to testify, Jenn Thomas, a clinical supervisor at Indian Oaks Academy, would state she was assigned to the case of respondent and that on the dates of June 19, June 25, June 28, July 1, July 4, and July 21 of 2012, the respondent was not at his placement in Indian Oaks Academy as required by his probation. Respondent then admitted he violated his probation. The trial court accepted the admission and found respondent violated his probation. The matter was continued for disposition.

¶12 On August 27, 2012, probation officer Tejada informed the court that in the last six months respondent's behavior began to deteriorate. Tejada further stated that respondent was leaving the Indian Oaks Academy to meet with girls who were sex offense victims. Tejada also stated that since early June respondent's behavior "started to deteriorate" as evidenced by respondent damaging windows and leaving the facility on many occasions. Tejada recommended respondent be admitted to a secured facility, such as the Department of Juvenile Justice (DJJ), so respondent could obtain intense treatment in a more structured environment. The State adopted Tejada's recommendation.

¶13 Respondent requested to be admitted to another treatment facility and to explore other placement options. The trial court continued disposition for 30 days in order for the probation officer to inquire into alternative options and continued the matter for sentencing. Respondent remained in custody.

¶14 On September 25, 2012, DCFS worker Megan Burgess informed the court there were no openings available in any treatment facility and that each had a wait list of "at least a few

months." Burgess expressed that the Juvenile Transitional Facility would be the best option for respondent, but there were seven individuals ahead of him on the waitlist. The State continued to request respondent be committed to the DJJ.

¶15 Respondent informed the trial court he would like an opportunity in another treatment facility, however, rather than not receive any treatment, he would prefer the court commit him to the DJJ. The following exchange then took place:

"[Respondent's Counsel]: Judge, I have not had an opportunity to review the court file to see, but it is my position that he should be given credit for every day. I know your Honor's interpretation.

THE COURT: I know when I first sentenced him, he got credit for 30 days' time considered served having been served.

[Respondent's Counsel]: But I think he served more than 30 days at that time.

THE COURT: Well, if he served more than 30 days, I will give him credit for the days he wasn't credited for. You will have to figure that out, between you and the State. At this point, at least from July 31st until today, he definitely gets credit for that. So that is whatever - -

[Respondent's Counsel]: Thirty-one - -

THE COURT: August has 31 days, and we are here on September 25th, right?

[Respondent's Counsel]: I believe that's 57 days.

THE COURT: Okay. So that would be 56 plus July 31st. So it's at least 57 days credit.

If you find other days that he was held but that he wasn't credited for, I will give you credit for those also.

[Respondent's Counsel]: Judge, in the denial of the credit for the 30 days your Honor believes he has already received credit for, with respect to the Department of Juvenile Justice, is over our objection. I believe he is entitled to every day.

THE COURT: All right. You have the right to appeal."

After a short recess, respondent's counsel requested the court grant respondent 193 days of credit. Respondent never requested he be credited for time spent at the two residential treatment facilities. The trial court provided respondent with 163 days of credit, without consideration of the 30 days previously credited. Respondent was sentenced to a maximum of three years in the Department of Juvenile Justice. Respondent did not file a motion to reconsider the sentence. Respondent timely filed this appeal on October 25, 2012.

¶16

#### ANALYSIS

¶17 On appeal, respondent contends he should receive credit for the time spent in two residential treatment facilities as a condition of his probation, in addition to the time he spent in actual detention pursuant to the court order of July 15, 2011, for a total of 418 days.

¶18 The State concedes that respondent is entitled to a credit of 195 days, but asserts respondent is not entitled to any additional credit for time spent in a residential treatment program. The State further asserts that respondent has forfeited his argument regarding credit for time spent in residential treatment, as no request was made to the trial court for the 223 days credit.

¶19

#### A. Forfeiture

¶20 In general, issues relating to sentencing credit are not subject to the rule of forfeiture. *In re Justin L.V.*, 377 Ill. App. 3d 1073, 1088 (2007) (considering whether respondent was entitled to additional presentence credit). Moreover, forfeiture is a limit on the parties and not on the

court. *People v. Normand*, 215 Ill. 2d 539, 544 (2005). Accordingly, we will review respondent's contentions. See *In re Jabari C.*, 2011 IL App (4th) 100295, ¶ 21 (respondent's failure to raise the sentence-credit issue in his motion to reconsider sentence did not result in forfeiture).

¶21

#### B. Standard of Review

¶22 Pursuant to statute, a trial court is required to grant credit to a minor for time spent in predisposition detention. *Id.* ¶ 26 (citing 705 ILCS 405/5-710(1)(a)(v) (West 2008)).

Specifically, section 710 of the Juvenile Court Act of 1987 provides a juvenile "shall be given credit on the sentencing order of detention of time spent in detention \* \* \* as a result of the offense for which the sentencing order was imposed." 705 ILCS 405/5-710(1)(a)(v) (West 2012). "A trial court is statutorily mandated to give a minor credit for his predisposition detention." *In re Rakim V.*, 398 Ill. App. 3d 1057, 1059 (2010). Accordingly, we review *de novo* a trial court's application of a statute. *In re Jabari C.*, 2011 IL App (4th) 100295, ¶ 23.

¶23

#### C. Sentence Credit

¶24

##### 1. Credit for Time Served in Detention

¶25 Both parties agree that respondent should be credited 195 days for the time he was detained at CCJDC. We agree that respondent is entitled to a credit of 195 days.

¶26 The Juvenile Court Act of 1987 expressly addresses sentencing credit for juveniles placed in detention. 705 ILCS 405/5-710(1)(a)(v), (1)(b) (West 2012). Our supreme court, however, has applied the broader adult sentencing credit requirements of section 5-8-7(b), now section 5-4.5-100(b), of the Unified Code of Corrections, to juveniles. See *In re J.T.*, 221 Ill. 2d 338, 352-53 (2006); *In re B.L.S.*, 202 Ill. 2d 510, 518 (2002) ("Nothing in the Code restricts section 5-8-7(b) to adult offenders, and we can conceive of no rationale for denying a juvenile credit against

a determinate sentence for time spent in predisposition custody."). An individual who is committed to the DJJ "for an indeterminate term is entitled to predisposition sentencing credit 'for any part of a day for which he spent some time in custody.' " *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 35 (quoting *In re Rakim V.*, 398 Ill. App. 3d at 1059).

¶27 Respondent was first placed in custody on July 15, 2011, and was held in custody through November 22, 2011, for a total of 131 days. Respondent was then held for 8 days from December 13, 2011, through December 20, 2011. Then, on July 31, 2012, respondent was placed in custody for violating his probation and held until he was sentenced on September 25, 2012, for a total of 56 days. Accordingly, respondent is entitled to receive credit for 195 days he was in custody prior to disposition.

¶28 2. Credit for Time in a Residential Treatment Facility

¶29 Respondent further maintains he is entitled to 223 days of mandatory credit for the time spent at two residential treatment facilities, ABTC and Indian Oaks Academy, as a condition of his probation as he was "in custody" within the meaning of section 5-4.5-100(b) of the Unified Code of Corrections. That section provides for two types of sentencing credit, mandatory credit and discretionary credit:

"[An] offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for the number of days *spent in custody as a result of the offense for which the sentence was imposed*. The Department shall calculate the credit at the rate specified in Section 3-6-3 (730 ILCS 5/3-6-3). Except when prohibited by subsection (d), the trial court shall give credit to the defendant for time spent in home detention on the same sentencing terms as incarceration as provided in Section 5-8A-3. The trial court may give credit to the defendant for the number of days spent confined for

psychiatric or substance abuse treatment prior to judgment, if the court finds that the detention or confinement was custodial." (Emphasis added.) 730 ILCS 5/5-4.5-100(b) (West 2012).

A "respondent is entitled to credit for any time spent 'in custody' as a condition of probation." *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 39 (quoting *People v. Scheib*, 76 Ill. 2d 244, 251 (1979) and *People v. Dieu*, 298 Ill. App. 3d 245, 250 (1998)). Our supreme court has defined "custody" for the purposes of sentencing credit as " 'the legal duty to submit' to legal authority and not actual physical confinement." *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 39 (quoting *People v. Beachem*, 229 Ill. 2d 237, 252 (2008)). It is the duty of the trial court, along with assistance from the prosecutor and defense counsel, to appropriately apply sentencing credits to an offender. *Dieu*, 298 Ill. App. 3d at 249. We note that defendant does not argue that he is entitled to discretionary credit.

¶30 In *Beachem*, our supreme court held a defendant was "in custody" while participating in the Sheriff's Day Reporting Center program (Program) and, thus, was entitled to sentencing credit. *Beachem*, 229 Ill. 2d at 252-53. The court first considered the facts surrounding the Program and the defendant's participation in the program. The court determined the Program was "a 'one-of-a-kind intensive supervision program that reduces overcrowding in Cook County Jail while providing services and direction for pretrial nonviolent participants.'" *Id.* at 240 (quoting <http://www.cookcountysheriff.org/dcsi/day.html> (last visited April 21, 2008)). The Program involved the defendant spending three to nine hours at the Center on 171 days. *Id.* at 239. Based on these facts, the court reasoned the defendant was "in custody" because he "had a legal duty to submit to [the sheriff's] authority at any time and for any reason." *Id.* at 253. The court went on to state that even if physical custody was required, the defendant was subject to

limited confinement because: (1) services were provided at the sheriff's discretion; (2) defendant was not free to come and go as he pleased; (3) defendant was not free to structure his day as he saw fit; (4) defendant was obligated to report at an established time and participate in a state-run program; and (5) defendant could not decline to attend the program. *Id.* at 253.

¶31 In the companion cases of *In re Christopher P.*, 2012 IL App (4th) 100902, and *In re Darius L.*, 2012 IL App (4th) 120035, the reviewing court concluded the respondents were entitled to sentencing credit for time spent in a residential treatment program as it was "custody" within the meaning of section 5-4.5-100(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-100(b) (West 2010)). *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 4; *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 4. In both cases, the respondents were sentenced to a year's probation with conditions including successful completion of the Adam's County Juvenile Detention Center treatment program (Treatment Program). *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 1; *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 1.<sup>4</sup> The parties stipulated to the facts regarding the Treatment Program; that it is "a 90-day program where the resident 'works on areas of concern, such as schooling, appropriately interacting with or responding to authority, [and] drug use.' " *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 13.

¶32 In each case, we determined the juveniles were "in custody" while in the Treatment Program, as each respondent had "a legal duty to submit to state authority." *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 45; *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 41. We based our determination that the respondents were "in custody" on the following facts:

"(1) respondent was court ordered to participate in this county-run program; (2) he

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<sup>4</sup> The Treatment Program provided Christopher P. with counseling from a detention center therapist. *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 13. Darius L. received mental-health counseling while in the Treatment Program. *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 8.

could be held longer than the scheduled 90-day period, here, 117 days, at the discretion of Detention Center officials; (3) he was subject to solitary confinement for policy violations (respondent was subject to a 24-hour confinement with at least eight shorter confinements); (4) he was subject to strip searches upon return from home visits; (5) his freedom of movement was restricted by locked external and internal doors (including his bedroom door) throughout the Detention Center; (6) he was subject to the same policies and conditions as Detention Center residents (who are entitled to sentencing credit); and (7) he resided in the Detention Center completely integrated with Detention Center residents, wearing the same blue uniforms, attending school classes and eating side-by-side with Detention Center residents." *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 45; see *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 41.

¶33 In addition, in *Darius L.* the State argued the sentencing credit was permissive under section 5-4.5-100(b) of the Unified Code of Corrections. *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 43. The reviewing court reasoned the "permissive language" of this section refers to psychiatric or substance abuse treatment, which the trial court is authorized to order under the Juvenile Act. *Id.* Based on the record before us, we concluded the Treatment Program was not a substance abuse program, and, therefore, did not fall within the permissive language of the statute. *Id.* The reviewing court ultimately determined the respondents in both cases were entitled to credit for time spent in the Treatment Program and remanded the matter for the trial court to accord respondents with their respective additional sentencing credit. *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 52; *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 50.

¶34 Here, respondent asserts he is entitled to 223 days of mandatory credit for time spent "in custody" at two residential treatment facilities pursuant to section 5-4.5-100(b) of the Unified

Code of Corrections. 730 ILCS 5/5-4.5-100(b) (West 2012)). Respondent argues he, like the minor in *Christopher P.*, was placed "on confinement" for over a week by the Indian Oaks Academy staff after violating their rules and that he was subject to probation-revocation proceedings if he violated the rules of the residential treatment programs. Respondent further argues that "he was not free to leave or move about as he pleased," albeit, with no citation to the record in violation of Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013).

¶35 We initially note that the juveniles in *Christopher P.* and *Darius L.* were placed in treatment programs which were "completely integrated" with the Adam's County Juvenile Detention Center. *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 45; *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 41. The treatment programs at issue in *Christopher P.* and *Darius L.* differ from the residential treatment programs attended by respondent. Although the record in the present case is devoid of many relevant facts which would aid us in a comparison of the treatment programs, we do know that respondent's treatment programs did not occur inside a county run facility. See *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 14. In addition, respondent was not provided treatment by county detention officers who were acting as "treatment coordinators." *Id.* ¶ 11. We can further presume that respondent was not "subject to the same housing conditions as Detention Center residents and not segregated from them." *Id.* ¶ 14. The fact the juveniles in *Christopher P.* and *Darius L.* attended a treatment program which was housed inside a county detention facility, however, was only one of many facts the reviewing court considered in order to determine whether the juveniles were entitled to sentencing credit. *Id.* ¶ 45; *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 41.

¶36 Unlike the present case, the respondents in *Christopher P.* and *Darius L.* presented the trial court with a significant number of facts upon which the trial court could rely in order to

determine whether the juveniles were "in custody" while attending the Treatment Program. *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 45; *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 41. The record in the present cause, however, does not contain a sufficient factual basis for us to determine whether respondent was "in custody" while attending ABTC and Indian Oaks Academy. The record is devoid of facts regarding the type of treatment respondent received, whether there was any state involvement with the facilities, or the living conditions at the treatment facilities. See *id.* Although the record does reflect that respondent's movement was not restricted (respondent was able to leave Indian Oaks Academy on multiple occasions as respondent admitted), there was no testimony adduced at the hearing regarding whether respondent was subjected to strip searches, solitary confinement, or other means of restricting his movement as discussed in *Christopher P.* See *Christopher P.*, 2012 IL App (4th) 100902, ¶ 45. Accordingly, we cannot determine whether respondent was "in custody" for sentencing credit purposes. We, therefore, remand the matter for the trial court to determine if respondent is entitled to mandatory credit for his time spent in residential treatment and to issue credit to respondent according to its determination.

¶37 At sentencing, the predisposition custody credit mandated by statute was not calculated correctly, as explained above. The court allowed 163 days of credit, instead of 195 days.

Further, the record demonstrates that respondent attended two residential treatment facilities, which may or may not warrant mandatory sentencing credit under section 5-4.5-100(b).

Although the court need not articulate every factor it considers in imposing a sentence (*People v. Martin*, 2012 IL App (1st) 093506, ¶ 48), the record demonstrates the trial court did not consider the mandatory credit under section 5-4.5-100(b). Due to the trial court's error in prescribing the mandatory predisposition credit, as well as its failure to assess whether respondent should

receive sentencing credit for the time spent while attending ABTC and Indian Oaks Academy pursuant to section 5-4.5-100(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-100(b) (West 2012)), we remand this matter for hearing on whether mandatory credit should be given to respondent for his time spent in residential treatment and a determination on the amount of credit, if any, due to respondent and for correction of the mittimus to reflect 195 days credit for predisposition custody.

¶38

#### CONCLUSION

¶39 For the foregoing reasons, pursuant to Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), we remand the matter to the trial court to correct respondent's mittimus to reflect a sentence credit of 195 days for time spent in predisposition custody. We further remand the matter for the trial court to consider whether respondent is entitled to mandatory credit for the time spent while attending ABTC and Indian Oaks Academy pursuant to section 5-4.5-100(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-100(b) (West 2012)). We otherwise affirm the trial court's judgment.

¶40 Affirmed; remanded with directions.