

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).

2015 IL App (3d) 150108-U

Order filed June 5, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> Q.M.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-15-0108
)	Circuit No. 13-JD-442
v.)	
)	
Q.M.,)	Honorable
)	Albert L. Purham, Jr.,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice O'Brien dissented.

ORDER

- ¶ 1 *Held:* The cause is remanded with directions for the trial court to: (1) determine if the respondent's inpatient substance abuse treatments were custodial; and (2) award additional presentence custody credit.
- ¶ 2 The respondent, Q.M., appeals from the trial court's order that revoked the respondent's probation and sentenced him to the Illinois Department of Juvenile Justice (Department) for a

term not to exceed his twenty-first birthday. On appeal, the respondent argues that the sentencing order should be amended to reflect additional credit for time that he spent in presentence custody. We remand with directions.

¶ 3

FACTS

¶ 4

On November 18, 2013, the State filed a juvenile delinquency petition that alleged that the respondent had committed the offense of aggravated robbery (720 ILCS 5/18-1(b)(1) (West 2012)). The court adjudicated the respondent delinquent. On January 9, 2014, the court made the respondent a ward of the court and sentenced the respondent to five years' probation. As a term of probation, the court ordered the respondent to successfully complete an inpatient substance abuse treatment program. Thereafter, the respondent was found in violation of his probation for failing to complete the substance abuse treatment program. The court resentenced the respondent to five years' probation and ordered the respondent to successfully complete a different substance abuse treatment program. Following two additional probation violations, the court committed the respondent to the Department until his twenty-first birthday. The court awarded the respondent 82 days of custody credit. The respondent appeals.

¶ 5

ANALYSIS

¶ 6

The respondent argues that he is entitled to 218 days of additional custody credit. The State agrees that the respondent is entitled to additional credit, but argues that remand is necessary to determine the amount of credit. We agree with the State and remand the cause with direction for the trial court to award the appropriate amount of custody credit.

¶ 7

A juvenile offender is entitled to receive presentence custody credit against his determinate sentence. *In re B.L.S.*, 202 Ill. 2d 510, 519 (2002); see also 730 ILCS 5/5-4.5-100(b) (West 2012). The credit may include time that the offender spent confined while receiving

psychiatric or substance abuse treatment prior to the judgment, if the court finds that the detention or confinement was custodial. 730 ILCS 5/5-4.5-100(b) (West 2012). Our supreme court has defined "custody" as "the legal duty to submit" to legal authority. *People v. Beachem*, 229 Ill. 2d 237, 252 (2008). Physical confinement is not required for a custody finding. *In re Christopher P.*, 2012 IL App (4th) 100902.

¶ 8 In the instant case, the amount of custody credit that the respondent is entitled to is unclear. From the record, we are unable to determine the beginning and end dates of the respondent's presentence custody period. Additionally, the trial court did not make a finding that the respondent's inpatient substance abuse treatment programs were custodial. Therefore, we remand the cause to the trial court with directions to determine if the respondent's inpatient treatment programs were custodial and award additional presentence custody credit for the earlier periods that the respondent spent in custody.

¶ 9 CONCLUSION

¶ 10 The judgment of the circuit court of Peoria County is remanded with directions.

¶ 11 Remanded with directions.

¶ 12 JUSTICE O'BRIEN, dissenting.

¶ 13 Since I would find the record in this case sufficient to determine that the minor was in custody continuously from November 18, 2013 through June 23, 2014, I would grant the relief requested by the minor and give him credit for 218 days of presentence custody instead of remanding this matter to the trial court for further proceedings.

¶ 14 Even though, as noted by the majority, the trial court did not make a finding that the inpatient treatment facility was custodial for purposes of receiving presentence credit, the record clearly demonstrates that the minor was ordered to complete inpatient treatment as a condition of

his probation. As such, the inpatient treatment qualifies for credit pursuant to our Supreme Court's decision in *People v. Beachem* since the minor was under a "legal duty to submit" to legal authority. *People v. Beachem*, 229 Ill. 2d 237, 252 (2008). And while the State maintains that it is unclear whether the minor was actually in custody the entire time from November 18, 2013 through June 23, 2014, I think the court docket entries clearly demonstrate that the minor was continuously detained by either the Peoria County Juvenile Detention Center, Gateway and Chestnut.

¶ 15 Therefore, I would grant the relief requested by the respondent minor.