2016 IL App (4th) 150913-U

NO. 4-15-0913

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 30, 2016
Carla Bender
4th District Appellate
Court, IL

In re: ISAAC M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 15JD19
ISAAC M.,	)	
Respondent-Appellant.	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The issue of whether a probation officer had authority to place respondent on home confinement is moot, and because respondent has failed to clearly show a likelihood that this issue will recur, the public-interest exception to the doctrine of mootness is inapplicable.

(2) Respondent is entitled to additional presentence credit.

¶ 2 After finding respondent, Isaac M., to be a delinquent minor, the trial court committed him to the Department of Juvenile Justice. He appeals on two grounds.

¶ 3 First, respondent argues that a probation officer lacked authority to place him on home confinement during a continuation of the sentencing hearing. We find this issue to be moot, since the home confinement is over and respondent now is confined in the Department of Juvenile Justice. Contrary to his contention, the public-interest exception does not allow us to

consider this moot issue, because he has failed to clearly show that the issue likely will arise again.

¶ 4 Second, respondent argues he is entitled to additional presentence credit. The State concedes he is entitled to additional credit for the periods of custody he has identified, and we find the concession to be justified.

¶ 5 Therefore, we modify the trial court's judgment so as to award respondent 97 additional days of presentence credit, and we remand this case with directions to issue an amended order of commitment reflecting the correct amount of credit. Otherwise, we affirm the trial court's judgment.

¶ 6 I. BACKGROUND

¶ 7 On January 22, 2015, the State filed a sworn petition, in which the State's Attorney alleged that respondent committed aggravated robbery on January 21, 2015 (720 ILCS 5/18-1(b)(1) (West 2014)), and that it therefore would be in the best interest of respondent and the public to adjudge him to be a delinquent minor.

¶ 8 On February 11, 2015, respondent pleaded guilty to the count of aggravated robbery, and the trial court adjudged him to be a delinquent minor.

¶ 9 On March 24, 2015, the trial court made respondent, age 16, a ward of the court and committed him to the Department of Juvenile Justice "for an indeterminate term which [should] automatically terminate in 15 years or upon the delinquent minor attaining the age of 21 years, whichever [came] first, unless the minor [was] sooner discharged from parole or custodianship [was] otherwise terminated in accordance with the Juvenile Court Act [of 1987 (Act)] or as otherwise provided by law." See 705 ILCS 405/5-750(3) (West 2014) ("[T]he commitment of a delinquent to the Department of Juvenile Justice shall be for an indeterminate

term which shall automatically terminate upon the delinquent attaining the age of 21 years unless the delinquent is sooner discharged from aftercare release or custodianship is otherwise terminated in accordance with this Act or as otherwise provided for by law.").

¶ 10 On May 14, 2015, the trial court granted a motion by respondent to reduce the sentence. The court vacated the commitment to the Department of Juvenile Justice and imposed, instead, a 60-month term of probation. One of the conditions of probation was that respondent refrain from using cannabis.

¶ 11 On July 15, 2015, respondent admitted a petition for the revocation of probation, in which the State alleged that a urine sample he provided on June 5, 2015, tested positive for cannabis. The trial court revoked probation and placed him in the temporary custody of the court services department until the resentencing hearing, scheduled for July 31, 2015.

¶ 12 The parties appeared on July 31, 2015, for the resentencing hearing. The trial court stated:

> "THE COURT: Before I hear the recommendations, I do have one proposal. In light of the detention center report and the information and recommendation, this is a young man who really is on the cusp of going back to the Department of Juvenile Justice. And I will let both parties speak to this. One thing I've done when I'm making such a critical decision is to allow the minor to be released back to the custody of the custodian and guardian, and continue the sentencing hearing for approximately [45 days] to see how he does in the community before I make that decision. Now, I'm not in any way pressuring the parties to agree to that, but it

seems to me that might be an advantageous decision here because this really is a close call for the Court, and it's something that's going to affect [respondent's] life. So your thoughts in that regard, Mr. Sullivan [(assistant State's Attorney)]?

MR. SULLIVAN: I think that's a good idea, [Y]our Honor.

THE COURT: And Ms. Jessup [(assistant public defender)], are you in agreement?

MS. JESSUP: Yes, [Y]our Honor. Fully.

THE COURT: Alright. And as I understand it then, I know the Aunt here is a foster placement, she's certainly been through a lot. Ma'am, are you willing to have your nephew come back into your placement through the Department?

MS. MOORE: Yes.

THE COURT: [Respondent], I'm going to do something extraordinary, and you've been given a lot of chances, sir. You really are at risk of just going back to the Department of Juvenile Justice. You've done well in detention, and I know the ability is there and the potential is there. *** I'm going to let you go home and prove to me that you have grown up and you mean what you say.

***

So I'm going to give you one last chance, and I don't do this very often. ***

So I'm going to let you be released to the custody of the Department of Children and Family Services. [Y]ou'll go back home with your Aunt. Follow her rules. I don't care if you don't want to be in by her curfew, that's what you're going to have to do. Follow all the rules of Court Services, and we're going to give you an opportunity to show us that you have grown up and you don't need to be locked up, and nothing would make me happier than to see that person.

I'm starting to see it here, but you need to show to me you can do it not in the detention center, but back home. Do you have any questions, sir?

RESPONDENT MINOR: No.

THE COURT: Alright. I'll give you this last chance. I will allow the Respondent Minor to be released then at this time, and it will be pursuant, I know I've revoked probation but I'm going to make it—we'll have to have a pretrial conditions order, I believe, Ms. Jessup, I'll give you a chance to fill that out. And he's to follow all the recommendations of Court Services. So I will give Court Services the authority to set these ramifications since technically probation has been revoked. It will also be obviously to follow all the household rules of his mother. And I'll go off the record so you can discuss that with him. I'm not going to put him

on home confinement at this point because I want to see if he can do it on his own. He's old enough to show us he can do it.

MS. JESSUP: Yes, [Y]our Honor.

THE COURT: Let me ask one thing. Ms. Zebe [(Supervisor of Juvenile Services)], are you in concurrence with the recommendation for a [global positioning system (GPS)] monitor? I don't know if we still do that with minors.

MS. ZEBE: We have one that we can use.

THE COURT: Alright. Then I will make it pursuant to the GPS monitor. I believe that would be a good way to make the transition without the strictness of home confinement.

MS. JESSUP: Okay.

* * *

THE COURT: And if you would add that to the order, Ms. Jessup, he's to cooperate with the conditions of his GPS.

MS. JESSUP: Yes, [Y]our Honor. May I approach, [Y]our Honor?

THE COURT: You may. Alright. We'll show a pretrial conditions order is entered. Thank you. And I'll add to it, all conditions imposed by Court Services. Written order then is entered and a copy supplied to the minor in open court. The minor will be released once he's fitted with a GPS unit then, and he's to cooperate with the conditions of that.

> And I will continue this for a sentencing hearing. And that would be on Tuesday, September 22nd at 1:45 back in this courtroom. *** Court Services simply needs to file an addendum. I don't need an updated social investigation report, but simply an addendum for any new developments. Copy to the Court and counsel at least one day prior to that hearing.
>
> [Respondent] to cooperate fully and completely with all the conditions of pretrial release."

¶ 13 In the quotation above, the trial court invited Jessup to fill out "a pretrial conditions order" (although, strictly speaking, there never would be a trial, since respondent had pleaded guilty to aggravated robbery and, afterward, had admitted violating probation). The form Jessup filled out is in the record. It is entitled "Pre-Trial Conditions Order," and the preprinted language begins, "This matter was called for hearing pursuant to 705 ILCS 405/5-505 to determine the pre-trial conditions for release of Respondent minor." Further down, the form says: "It is hereby ordered that the respondent minor obey the following conditions until further order of this Court," and then the form lists some universally applicable conditions, such as "[n]ot violat[ing] any criminal law of any jurisdiction" and "[r]esid[ing] with and obey[ing] all the rules and regulations of the minor's parent(s) or placement." Next, there are conditions that the court can make applicable by placing an X next to the preprinted language. One of the conditions that lacks an X is "[o]bey[ing] home detention which requires the minor to be at home, school, counseling, church[,] or place of work unless in the company of a parent (or family member over 30 years of age as approved by the parent(s)." At the end of the list, however, an X is drawn next to a handwritten condition: "GPS monitoring and all conditions

imposed by Court Services." At the bottom of the page, under the language "I understand the above conditions and agree to comply with the conditions," is respondent's signature. To the right of respondent's signature is Jessup's signature, on the line labeled "Approved by Counsel for Minor/Respondent." Then, beneath their signatures, is the signature of Judge Heidi N. Ladd. All the signatures are dated July 31, 2015.

¶ 14 On September 21, 2015, the day before the continued resentencing hearing, a "High Risk Probation Officer," Alexis Cain, filed an updated social investigation report. Under the heading "Reported Social Adjustment," Cain noted: "With regards to curfew, the respondent minor was placed on a GPS ankle monitor and was explained home confinement rules. Ms. Moore reported the minor did not follow home confinement rules more times than not." Under the heading "Adjustment While on Probation," Cain wrote as follows:

> "This officer has received multiple telephone calls and e-mails from Mary Moore, foster mother, reporting the respondent minor was not abiding by his home confinement orders and had been disrespectful at times. Specifically, on 08/29/15, at [3 p.m.,] Ms. Moore made a missing person's report with the Urbana Police Department after the respondent minor failed to return home after work. The respondent minor did return home on his own however, not until almost [10 p.m.]
>
> On 7/31/15, the respondent minor had a GPS device installed on his person and was placed on home confinement. The respondent minor has had numerous violations for not complying with home confinement orders while being on the GPS bracelet.

The respondent minor has been told multiple times he was only allowed to attend school, work, and counseling unless he was with his aunt or an approved adult. Yet, he continued to go to the park and to his friend's house unaccompanied by an approved adult. This Officer specifically told the respondent minor she did not want him at the Castle Apartments in Urbana due to the high crime rate in the area and also because he was on home confinement. The respondent minor continued to go to this area and hangout [*sic*] until evening hours. It should be noted that these violations have been happening more often as of lately."

¶ 15 Cain summed up:

"First and foremost, this is a respondent minor who was placed on probation in May after his commitment to the Illinois Department of Juvenile Justice was vacated. The respondent minor was scheduled to have a Resentencing hearing on 07/31/15; however, after consideration from the Court his hearing was continued until 09/22/15. The respondent minor had previously indicated to Juvenile Probation Supervisor, Teresa Zebe, if given one last chance and placed on GPS monitoring that he would demonstrate to the Court his compliance with curfew and his goal would be to successfully attend school this coming school year. After being granted a continuance to prove compliance the respondent minor has continued to follow through with some of the

> Probation conditions and chose not to with others. Specifically, he has met weekly with this officer and has always been polite and respectful. The respondent minor has attended school as directed and seems to be doing very well, obtained employment, attends counseling for the most part as directed, has had no new police contacts or arrests, and has abstained from the use of illicit drugs. However, the areas that remain of concern and very disappointing is [*sic*] his inability to follow home confinement and his unwillingness to abide by the rules of his household. Further, that he is not consistently engaging in substance abuse treatment."

¶ 16 Cain recommended a 60-month term of probation.

¶ 17 Likewise, in the resentencing hearing on September 22, 2015, the State and defense counsel recommended probation. The trial court stated, however:

> "I respect the recommendations here, but I think they're naïve. I absolutely disagree with them. The whole point of continuing this was to let [respondent] show us he learned, and he hasn't. He keeps doing what he wants to do, running with the wrong people, and running wild. He's enamored with the street life."

¶ 18 The trial court noted, for instance, that Cain had told respondent not to go to Castle Apartments and respondent had treated that directive from her as optional. The court said:

> "Violating the GPS. I even put this young man on a GPS so we could give him a chance to prove that he's grown up and he

> would make the right decisions, and nothing has changed. Yeah, you're going to school, great, but this was the problem all along. Ms. Cain has told you, don't go to Castle Apartments. You keep going, as if it's your option. *** Missing half the appointments with substance abuse. Missing Court Services appointment [*sic*]. Blowing off the court orders. That's just not an option here.
>
> And the way you're doing it is so dangerous. The reason Ms. Cain told you not to go to those apartments is because we don't want to see you as a victim, or mixed up in this behavior.
>
> * * *
>
> I do find that unfortunately for his aunt, she's just unable to keep up with him at this point because of his own choices. I find commitment is necessary to ensure the protection of the public from the consequences of the criminal activity of a delinquent minor."

¶ 19 Therefore, the trial court resentenced respondent to commitment to the Department of Juvenile Justice "for an indeterminate term which [should] automatically terminate in seven (7) years or upon the delinquent minor attaining the age of 21 years, whichever [came] first." The court allowed him credit for 90 days previously served in detention.

¶ 20 On November 12, 2015, the trial court denied a motion by respondent to reduce the sentence to "a community-based sentence."

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 A. The Moot Issue of Home Confinement

¶ 24 Respondent argues as follows. It is a judicial function to set the terms and conditions of probation (*People v. Thomas*, 217 Ill. App. 3d 416, 417 (1991)), and a probation officer, who is not a judge, lacks the authority to impose a condition of probation. On July 31, 2015, in its remarks on the record, the trial court expressly decided not to put respondent on home confinement, and yet, according to the updated social investigation report of September 21, 2015, "Court Services ordered [respondent] on home confinement—which [was] a discretionary condition of probation and was specifically not imposed by the trial court." Respondent cites section 5-715(2)(q) of the Act (705 ILCS 405/5-715(2)(q) (West 2014)), which provides: "*The court* may as a condition of probation *** require that the minor *** serve a term of home confinement." (Emphasis added.)

¶ 25 This argument assumes that respondent was on probation from July 31 to September 22, 2015, when the court services department put him on home confinement. But he could not have been on probation during that period, because the trial court revoked probation on July 15, 2015.

¶ 26 Thus, the release of respondent from the Department of Juvenile Justice, from July 31 to September 22, 2015, could not have been a probationary release. Rather, apparently, it was a release pursuant to section 5-705(3) of the Act (705 ILCS 405/5-705(3) (West 2014)), which provides: "On its own motion ***, the court may adjourn the [sentencing] hearing for a reasonable period to receive reports or other evidence and, in such event, shall make an appropriate order for detention of the minor or his or her release from detention subject to supervision by the court during the period of the continuance." In this case, the "other evidence"

would have been generated during the continuance, *i.e.*, evidence of respondent's behavior during the continuance. *Id.*

¶ 27 So, the issue is as follows. If, when continuing a sentencing hearing, the trial court releases the respondent from detention for the duration of the continuance and, on the one hand, expressly declines to require "home confinement" during the continuance but, on the other hand, requires "GPS monitoring" and compliance with "all conditions imposed by Court Services," does the court services department have authority to impose "home confinement" (whatever that means in this context) as one its own conditions?

¶ 28 Regardless of how we answer that question, our answer would have no effect on respondent, because the home confinement has ended and he has been recommitted to the Department of Juvenile Justice. Thus, this issue is moot, as respondent admits. See *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009).

¶ 29 He invokes, however, the public-interest exception to the mootness doctrine. That exception has three criteria, all of which must be narrowly construed and clearly shown. *Id.* at 355-56. "The public interest exception allows a court to consider an otherwise moot case when (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question." *Id.* at 355.

¶ 30 We decide *de novo* whether respondent has clearly shown the three criteria. See *id.* at 350. He has clearly shown the first criterion: a minor's liberty interest is a question of a public nature. *In re Austin S.*, 2015 IL App (4th) 140802, ¶ 30. He has clearly shown the second criterion, too, since this question "is a matter of first impression." *Id.* ¶ 31. But he has not clearly shown the third criterion, namely, "a likelihood of future recurrence of the question."

Alfred H.H., 233 Ill. 2d at 355. This is the epitome of an unusual issue. Respondent has not clearly shown that the trial court is likely again, in the future, to release a respondent minor during a continuance of the sentencing hearing, and order the respondent, during the continuance, to wear a GPS monitoring device and comply with any conditions the court services department imposes but, at the same time, the court will expressly refrain from putting the respondent on "home confinement." *Cf.* 705 ILCS 405/5-7A-115(A) (West 2014) ("The supervising authority may promulgate rules that prescribe reasonable guidelines under which an electronic home detention program shall operate" including a rule that "[t]he participant shall remain within the interior premises or within the property boundaries of his or her residence at all times during the hours designated by the supervising authority" with the exception of "approved absences," such as working or attending school.).

¶ 31 The trial court itself remarked: "I'm going to do something extraordinary ***." Because respondent has not shown "a substantial likelihood" that the unusual circumstances of this case will recur, we decline to entertain the moot issue of home confinement. *Alfred H.H.*, 223 Ill. 2d at 358.

¶ 32 B. Sentencing Credit

¶ 33 When resentencing respondent on September 22, 2015, the trial court allowed him only 90 days of presentence credit. Respondent argues that, under section 5-710(1)(b) of the Act (705 ILCS 405/5-710(1)(b) (West 2014)), he was entitled to 183 days of presentence credit.

¶ 34 On the date of the aggravated robbery, January 21, 2015, section 5-710(1)(b) provided as follows:

> "(b) A minor found to be guilty may be committed to the Department of Juvenile Justice under Section 5-750 if the minor is

> 13 years of age or older, provided that the commitment to the Department of Juvenile Justice shall be made only if a term of incarceration is permitted by law for adults found guilty of the offense for which the minor was adjudicated delinquent. The time during which a minor is in custody before being released upon the request of a parent, guardian or legal custodian shall be considered as time spent in detention." *Id.*

¶ 35 Thus, section 5-710(1)(b) entitles a minor to credit, against the sentence of commitment, for any time during which the minor previously was "in custody." *Id.*; see also *In re Montrell S.*, 2015 IL App (4th) 150205, ¶ 65. "A juvenile who is committed to the Department [of Juvenile Justice] for an indeterminate term is entitled to predisposition sentencing credit for any part of a day for which he spent some time in custody." (Internal quotation marks omitted.) *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 35.

¶ 36 Respondent identifies five periods of presentence custody. We quote from his brief:

> "A. 22 days, from January 21, 2015[,] until February 11, 2015, which included his arrest and detention in various detention centers [citations];
>
> B. 40 days, from February 11, 2015[,] until March 24, 2015, while on home detention [citations];
>
> C. 52 days, from March 24, 2015[,] until May 14, 2015, while at [the Department of Juvenile Justice] [citations];

D. 17 days, from July 15, 2015[,] until July 31, 2015, while at a detention center [citations]; [and]

E. 52 days, from July 31, 2015[,] until September 22, 2015, while on home confinement and electronic monitoring [citations]."

(Actually, we count 42 days from February 11 to March 24, 2015, and 54 days from July 31 to September 22, 2015, making the total 187 days: 22 + 42 + 52 + 17 + 54 = 187.)

¶ 37 As respondent points out, section 5-710(1)(b) entitles him to credit for time he spent "in custody," and this section does not differentiate between different types of custody. 705 ILCS 405/5-710(1)(b) (West 2014). For purposes of the presentence credit, "custody is custody." *Montrell S.*, 2015 IL App (4th) 150205, ¶ 65. Article V of the Act (705 ILCS 405/5 (West 2014)) is entitled "Delinquent Minors," and the definition section of article V, section 5-105 (705 ILCS 405/5-105 (West 2014)), defines "[n]on-secure custody" as including "electronic monitoring" and "home confinement" (705 ILCS 405/5-105(11) (West 2014)). Thus, respondent is entitled to presentence credit not only for the time he spent in secure custody, such as being locked in a cell, but also for the time he spent in nonsecure custody, such as being subject to electronic monitoring and home confinement.

¶ 38 The State agrees that, for that reason, respondent is entitled to credit for the dates he has identified in the quotation above. We agree, too.

¶ 39 III. CONCLUSION

¶ 40 For the foregoing reasons, we modify the trial court's judgment so as to award respondent 187 days, instead of 90 days, of presentence credit, and we remand this case with directions to issue an amended order of commitment. We affirm the trial court's judgment as modified.

¶ 41 Affirmed as modified; cause remanded with directions.