2019 IL App (5th) 160256-U

NO. 5-16-0256

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Effingham County.
	)	
v.	)	No. 15-CF-12
	)	
JAMES E. MEYER JR.,	)	Honorable
	)	Kimberly G. Koester,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Overstreet and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court was not required to give the defendant credit against his sentence for time spent in a residential substance abuse treatment program where the court allowed him to leave jail to participate in the program at his own request. However, the court had the discretion to give him credit for time spent in the program if it found the program to be custodial. Because the court failed to consider any evidence concerning the restrictions placed upon the defendant while he was in the program, the court was unable to make this determination and properly exercise its discretion.

¶ 2 The defendant, James E. Meyer Jr., pled guilty to one count of unlawful possession of methamphetamine (720 ILCS 646/60(b)(1) (West 2014)) and was sentenced to eight years in prison. The trial court gave him credit against his sentence for time spent in custody in the county jail prior to sentencing. The defendant also requested credit against his

sentence for 37 days he spent in an inpatient substance abuse treatment program. However, the court denied this request, finding that the program was not custodial. The defendant appeals that decision, arguing that (1) because he was not at liberty while participating in the residential treatment program, the court was required to give the defendant credit against his sentence for time spent "in custody" or, alternatively, (2) the court failed to recognize that it had the discretion to give him credit against his sentence for the 37 days in treatment and failed to consider any evidence as to the level of restriction involved in the treatment program. We agree with the defendant's second contention. We therefore reverse the court's decision to deny sentence credit, and we remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 At the time the defendant pled guilty, three unrelated criminal cases were pending against him. In June 2014, he was charged with possession of methamphetamine manufacturing materials, possession of methamphetamine precursors, and unlawful possession of methamphetamine. He was in custody on these charges from June 9 to August 24, 2014. On August 24, he was released on bond.

¶ 5 In January 2015, the defendant was again charged with unlawful possession of methamphetamine. He again posted bond and was released. In July 2015, the defendant was charged with unlawful possession of a stolen vehicle. The defendant claimed that he purchased the vehicle at issue, a motorcycle, from his uncle for $100. He was again released on bond.

¶ 6 On October 12, 2015, the defendant was arrested after failing to appear for a September 8 court hearing. The following day, the court held a hearing on the State's

motion to increase his bond. The court granted the State's motion and increased the defendant's bond to $50,000. The defendant indicated that he was unable to post bond. He was therefore taken into custody.

¶ 7 On October 29, 2015, the defendant filed a motion to modify his bond. He alleged that he had been accepted into an inpatient substance abuse treatment program at Gateway Foundations. He alleged that a bed would become available on October 30. He further alleged that the assistant state's attorney handling his case did not object. On that same day, the court entered an amended bond order permitting the defendant to leave the Effingham County Jail to attend the treatment program at Gateway Foundations. The order provided that he was to abstain from drug and alcohol use and submit to random drug and alcohol tests. The order further provided that he was to return to the jail after completing treatment. On December 6, 2015, the defendant completed treatment and returned to the Effingham County Jail.

¶ 8 On January 7, 2016, the defendant pled guilty to the charge of unlawful possession of methamphetamine as part of a negotiated plea agreement. Pursuant to the agreement, the State agreed to dismiss the other charges pending against the defendant, and the defendant agreed to pay restitution to the owner of the motorcycle at issue in the charge of unlawful possession of a stolen vehicle. It was understood that the State intended to seek an extended-term sentence.

¶ 9 At the plea hearing, the court also addressed a motion to reduce bond filed by the defendant the previous day. The court denied the motion. However, the trial judge noted that the defendant had posted bonds in both of the other cases. She explained that because

she was dismissing the charges involved in those cases pursuant to the plea agreement in this case, those funds would be returned. She pointed out that the funds would be sufficient to cover the defendant's bond in this case. The defendant posted bond and was released from custody.

¶ 10 On January 20, 2016, the defendant tested positive for methamphetamine, and the State filed a motion to modify his bond on January 22. The court granted the motion that same day, and the defendant was returned to custody.

¶ 11 On February 25, 2016, the court held a sentencing hearing. The State urged the court to sentence the defendant to the maximum extended-term sentence of 10 years, emphasizing his lengthy criminal history and the fact that he was on parole after serving a federal sentence for a forgery conviction when the first of the offenses involved in this case took place.

¶ 12 Defense counsel argued that there were significant mitigating factors, including the defendant's relative youth, the fact that he pled guilty, and the fact that he was working hard to overcome his addiction to methamphetamine. Counsel then addressed the matter of sentence credit for the 37 days the defendant was in the treatment program. He argued that the defendant "did not bond out, but a motion to modify his bond was granted to allow him to go to rehab." He argued that the defendant "was not at his liberty at that time."

¶ 13 The court sentenced the defendant to eight years in prison and imposed various fees and fines. The court recommended that the defendant receive substance abuse treatment in prison. The trial judge directly addressed the question of sentence credit for the defendant's stay at Gateway Foundations. She stated as follows:

> "I've also taken a little bit of time, and I appreciate your patience with me here today. I wanted to make sure I gave consideration to the arguments made here by [defense counsel] on behalf of the defendant regarding the credit they believe he would be entitled to if sentenced to the Illinois Department of Corrections."

The court indicated that the defendant would be given credit against his sentence for the periods he spent in jail prior to sentencing. However, the court "specifically denied the request for additional pretrial credit for time spent while he was in rehab and follow-up treatment." The court explained that "the defendant was on bond at that time, and time spent was not custodial."

¶ 14 The defendant filed a *pro se* motion to reduce his sentence, arguing both that he should have been given credit against his sentence for "time spent in rehab while on furlough" and that a shorter sentence was appropriate. Counsel filed an amended motion to reconsider sentence, arguing that the defendant's sentence was excessive.

¶ 15 On June 13, 2016, the court held a hearing on the defendant's motions. In addressing the defendant's argument that he should have been given credit against his sentence for the time he spent in treatment, the court stated, "I took a substantial amount of time to review the credit that this Court was going to give you for your time in incarceration [and] rehab." The court denied the defendant's motions. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 A. Mandatory Sentence Credit

¶ 18 The defendant first argues that sentence credit for time spent confined for inpatient substance abuse treatment is mandatory if the treatment program is custodial. He also

argues that, despite the court's finding to the contrary, the treatment program he attended was custodial. We note that, as we will discuss later, we find it necessary to remand this matter to the trial court for a full consideration of that question. We need not resolve that factual matter in order to address the defendant's mandatory sentencing argument because his argument presents a question of statutory construction.

¶ 19 The defendant's argument requires us to construe section 5-4.5-100(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-100(b) (West 2014)). Our primary goal in statutory construction is to determine and give effect to the intent of the legislature. The best indication of legislative intent is the language of the statute itself. *People v. Beachem*, 229 Ill. 2d 237, 243 (2008). We must consider the statute as a whole rather than reading words or phrases in isolation. *Id*. If possible, we should construe related statutory provisions so that they are harmonious with each other. *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 30 (citing *People v. Rinehart*, 2012 IL 111719, ¶ 26). We must also construe the statute "in light of the subject it addresses and the legislature's objective in enacting it." *Id.* Ambiguities in a penal statute should be construed in favor of criminal defendants. *Id*. However, giving effect to the intent of the legislature takes precedence over this rule. *People v. Gutman*, 2011 IL 110338, ¶ 12. Our review is *de novo*. *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 26.

¶ 20 Two sentences in subsection (b) of the statute are at issue. The first sentence provides that "the offender *shall* be given credit on the determinate sentence *** of imprisonment for the number of days spent in custody as a result of the offense for which the sentence was imposed." (Emphasis added.) 730 ILCS 5/5-4.5-100(b) (West 2014). The

second relevant sentence states that "[t]he 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.) *Id*.

¶ 21 The defendant contends that these two sentences, read together, "lead to contradictory outcomes." He explains that if a defendant is in a treatment program that is found to be custodial, he is "still in custody." He emphasizes that while the first sentence mandates that a defendant receive credit against his sentence for all days spent "in custody," the second sentence makes sentence credit discretionary in cases where a defendant, "although still in custody, also receives substance abuse treatment." In essence, his argument relies on the fact that both sentences use a form of the word "custody." He posits that if a defendant is in a treatment program that is found to be "custodial" within the meaning of the second sentence, he must also be "in custody" within the meaning of the first sentence. As such, he contends, the two sentences are inconsistent.

¶ 22 The defendant argues that in order to construe the two sentences so that they are harmonious with each other, we must find that the sentence credit was mandatory. In support of this argument, the defendant cites *People v. Scheib*, 76 Ill. 2d 244 (1979). We find *Scheib* to be distinguishable.

¶ 23 *Scheib* involved two consolidated appeals. At issue in both cases was sentence credit for time spent in custody prior to the revocation of probation or conditional discharge. *Id.* at 248. Defendant Scheib pled guilty to burglary and was sentenced to two years of probation. The conditions of his probation included spending 20 consecutive days and six

weekends in jail. *Id*. Four months later, his probation was revoked after he committed another offense. The court sentenced Scheib to two to six years in prison. The court gave him credit against this sentence for the time he spent in jail while the probation revocation proceedings were pending, but it did not give him credit for time spent in jail as a condition of his probation. *Id*.

¶ 24 Similarly, defendant Ferguson was convicted on a misdemeanor charge and sentenced to two years of conditional discharge. *Id*. at 249. One of the conditions of his discharge was that he serve 120 days in jail. However, the court gave him credit for the 60 days he spent in jail prior to sentencing and suspended the remaining 60 days. *Id*. Within a month, Ferguson's conditional discharge was revoked because he committed another offense. The court sentenced him to 264 days in jail. It did not give him credit against this sentence for the 60 days he spent in jail before his original sentence was imposed. *Id*.

¶ 25 The question in both cases was "whether time spent in confinement for a particular offense must be credited to a defendant upon resentencing after revocation of probation or conditional discharge." *Id*. The issue arose due to a potential conflict between two different statutory provisions, each of which appeared to be applicable to the circumstances of the cases. See *id*.

¶ 26 One of those provisions was section 5-6-4(h) of the Code (now section 5-6-4.1(h)), which governs resentencing after revocation of probation or conditional discharge. *Id*. at 250. It provides that " '[t]ime served on probation or conditional discharge' " is to be credited against a sentence imposed after revocation " 'unless the court orders otherwise.' " *Id*. (quoting Ill. Rev. Stat. 1975, ch. 38, ¶ 1005-6-4(h) (now at 730 ILCS 5/5-6-4.1(h))).

Our supreme court observed that, on its face, this provision "might be construed to apply both to time spent unconfined on probation (or conditional discharge) and to time which, though spent in confinement, was considered served as a condition of probation (or conditional discharge)." *Id.*

¶ 27 The other relevant provision was section 5-8-7(b), the predecessor of the statute at issue in this case. That provision applies "whenever a sentence of imprisonment is imposed, and it requires that credit be given for all time spent in custody for the same offense." *Id.* By contrast, section 5-6-4(h), the other relevant provision, gives trial courts the discretion to determine whether credit was warranted for time served on probation or conditional discharge. *Id.*

¶ 28 The supreme court found, however, that the two provisions were not necessarily incompatible. The court explained that the provisions "are incompatible only if section 5-6-4(h) is construed, as the State urges, to apply *** to the time actually spent in custody as a condition of probation or conditional discharge." *Id.* Although the court acknowledged that the provision does not explicitly distinguish between time spent in or out of custody while on probation or conditional discharge (see *id.*), the court found that the two provisions must be read "in consort" so that "section 5-8-7(b) is to apply whenever the time, for which credit is sought, was served in confinement, and that section 5-6-4(h) is to apply whenever the time was served unconfined on probation, conditional discharge or supervision" (*id.* at 251). Thus, the court concluded, "a defendant must be fully credited for any time which he has spent in jail for a particular offense, regardless of whether the

time in confinement was considered served as part of a condition of probation or conditional discharge." *Id.*

¶ 29 The court reached this conclusion for two reasons. First, as we have just discussed, it was a way of construing the two provisions so that they were harmonious with each other. See *id*. at 250-51. Second, and more importantly, a contrary interpretation would raise serious constitutional problems. See *id*. at 252-53. The court explained that the purpose of mandatory sentence credit is to insure "that a defendant is never subjected to more total time in confinement for a particular offense *** than he could have received for the offense in the first instance." *Id*. at 252; see also *People v. Ramos*, 138 Ill. 2d 152, 159 (1990). The court went on to explain that failure to give a criminal defendant credit against his sentence for all of the time spent in custody on a particular offense violates "the constitutional prohibition against double jeopardy" by subjecting a defendant to "multiple punishments for the same offense." *Scheib*, 76 Ill. 2d at 253 (citing *North Carolina v. Pearce*, 395 U.S. 711 (1969)). The court emphasized that this constitutional violation occurs " 'whenever punishment already endured is not fully subtracted from any new sentence imposed.' " *Id.* (quoting *Pearce*, 395 U.S. at 718). For these reasons, the court concluded that section 5-4-6(h) is not controlling if a sentence of probation or conditional discharge incorporates a requirement that the defendant spend any period in jail as a condition. *Id.* at 254.

¶ 30 This case does not present circumstances analogous to those present in *Scheib.* The defendants in *Scheib* were denied credit for time they spent in jail. There is no question that a defendant is "in custody" for purposes of mandatory sentence credit when he is in jail. We acknowledge that a defendant may also be "in custody" for purposes of mandatory

sentence credit even if he is not confined to a jail cell. *Ramos*, 138 Ill. 2d at 158. Indeed, a defendant may be deemed to be "in custody" even if he is not physically confined. See *Beachem*, 229 Ill. 2d at 252. As our supreme court has explained, the term "custody" refers to state control over the defendant. It is the level of state control to which a defendant is subject that determines whether or not he is "in custody" for purposes of mandatory sentence credit. *Id*.

¶ 31 A defendant is not entitled to sentence credit for periods of time during which he is released on bond. *People ex rel. Morrison v. Sielaff*, 58 Ill. 2d 91, 94 (1974). This rule generally applies even to time that a defendant spends in home confinement as a condition of bond. *Ramos*, 138 Ill. 2d at 159. This is because home confinement is not as restrictive as confinement in jail. A defendant confined to his home "is not subject to the regimentation of penal institutions." *Id*. Within the confines of his home, the defendant "enjoys unrestricted freedom of activity, movement, and association." *Id*. He is also not subject to the lack of privacy he would face if he were incarcerated. *Id*.[1]

¶ 32 By contrast, a defendant *is* entitled to sentence credit for time spent in the Cook County Sheriff's Day Reporting Center program (*Beachem*, 229 Ill. 2d at 255), even though such defendants are not incarcerated while they participate in the program (*id*. at 240). That program is administered by the Cook County Sheriff's Department. *Id*. at 241. Inmates selected to participate are released from jail, but they must report daily to the Day Reporting

[1]Defendants are, however, entitled to mandatory sentence credit for time spent in home detention under the conditions of the Electronic Home Detention Law (730 ILCS 5/5-8A-1 *et seq*. (West 2014)). *Id*. § 5-4.5-100(b); see also *People v. Moss*, 274 Ill. App. 3d 77, 80 (1995).

Center, where they spend three to nine hours per day subject to strict supervision. *Id*. at 240. If a participant does not follow the rules of the program, he is returned to jail. *Id*. at 241. Unlike a defendant who has been released on bond, a defendant in the Sheriff's Day Reporting Center program is not entitled to a hearing before he is reincarcerated for a violation of the program's rules. *Id*. at 251. A defendant in the program likewise has no recourse if the sheriff's department changes the rules of the program or terminates the program in its entirety. *Id*. The supreme court found that participation in the Sheriff's Day Reporting Center constituted "custody" for purposes of mandatory sentence credit because the sheriff's department exercises legal authority over those defendants, and the defendants are obliged "to submit to that authority." *Id*. at 252.

¶ 33 In this case, the defendant voluntarily chose to enter a substance abuse program; he was not ordered to do so. The court modified the conditions of his bond to allow him to enter the treatment program he selected without posting the additional bond required by the court's October 13, 2015, order. As we will discuss in more detail later in this decision, the record contains no evidence as to the precise nature of the program. As such, we do not know what restrictions were placed on the defendant by the facility while he was in treatment. We do not even know whether the defendant resided at the facility for the entire 37-day period or went home for follow-up treatment on an outpatient basis after an initial period of inpatient treatment.

¶ 34 We do know, however, what conditions were imposed on the defendant by the court. Specifically, the court required the defendant to abstain from drug and alcohol use, submit to random drug tests, and report back to the jail when he finished treatment. Those were

the same conditions imposed upon him when he was previously released on bond. The only difference is that he was permitted to leave jail for the duration of the treatment program without posting the increased bond. Under these circumstances, we find that the defendant was subject to far less state control than the defendants in *Beachem* and *Scheib*. In short, he was not subject to the type of state control that would raise the constitutional concerns present in those cases. It is worth noting that the defendant does not even attempt to argue that the court's denial of his request for sentence credit violated the constitutional prohibition against double jeopardy.

¶ 35 We recognize, of course, that the legislature could mandate sentence credit for forms of custody that are not sufficiently similar to confinement in jail to raise constitutional concerns if it chose to do so. We think it is apparent, however, that the legislature intended to treat residential psychiatric and substance abuse treatment programs differently from the type of state control that constitutes "custody" for purposes of the mandatory sentence credit provision.

¶ 36 We reach this conclusion for two reasons. First, as we have already discussed, the primary purpose behind the mandatory sentence credit provision is to avoid double punishment for the same crime. See *Ramos*, 138 Ill. 2d at 159. That problem is not present under the circumstances of this case.

¶ 37 Second, the provision mandating sentence credit for time spent "in custody" appears in the very same subsection of the statute as the provision giving trial courts the discretion to give defendants sentence credit for time spent in "custodial" inpatient psychiatric or

substance abuse treatment. 730 ILCS 5/5-4.5-100(b) (West 2014). This indicates that the legislature made a deliberate choice to treat the two situations differently.

¶ 38 As the defendant points out, the two pertinent sentences are potentially contradictory. As we noted earlier, the potential conflict arises due to the fact that both sentences use a form of the word "custody." The term "custody," however, can encompass a broad "spectrum of state control" over an individual, ranging from actual imprisonment to "constructive custody." *Beachem*, 229 Ill. 2d at 245. "Constructive custody" occurs when an individual's " 'freedom is controlled by legal authority' " even though he is not physically restrained. *Id*. Despite this broad definition of "custody," not all forms of custody fall within the scope of the statutory phrase "in custody" for purposes of mandatory sentence credit. *Id*. at 252.

¶ 39 We believe that the legislature intended the two relevant provisions in section 5-4.5-100(b) to apply to different levels of "custody." To conclude otherwise would thwart the legislature's clearly-expressed intent to treat residential substance abuse treatment programs differently from incarceration and other similar forms of "custody." It would also render the provision giving courts discretion over sentence credit for time spent in "custodial" treatment programs meaningless. See *Gutman*, 2011 IL 110338, ¶ 12 (explaining that statutes should be construed so that no clause or sentence is rendered superfluous). Thus, even assuming that the treatment program the defendant completed was "custodial" within the meaning of the discretionary sentence credit provision, he was not "in custody" within the meaning of the mandatory sentence credit provision.

¶ 40 In support of his argument to the contrary, the defendant calls our attention to two decisions of the Fourth District, *In re Darius L.* and *In re Christopher P*. We find both of those cases to be readily distinguishable from the case before us.

¶ 41 In *Christopher P.*, the defendant was adjudicated delinquent and sentenced to one year of probation. As a condition of his probation, he was ordered to successfully complete the Adams County Juvenile Detention Center treatment program. *Christopher P.*, 2012 IL App (4th) 100902, ¶ 1. That program is intended to address "general 'areas of concern' "; it is not specifically a psychiatric or substance abuse treatment program. See *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 43. While participating in the program, the defendant resided in the Adams County Juvenile Detention Center. He was "completely integrated" with other detention center residents, and he was subject to the same rules and conditions as those residents. *Christopher P.*, 2012 IL App (4th) 100902, ¶ 45. His freedom of movement was restricted even within the detention center, he was subject to strip searches after returning from visits to his family, and he was subject to solitary confinement for rule violations. *Id*.

¶ 42 The trial court subsequently revoked the defendant's probation and sentenced him to the Department of Juvenile Justice. The court denied his request for credit against this sentence for the time he spent in the juvenile detention center's treatment program. *Id*. ¶ 1. The defendant appealed that ruling. *Id*. ¶ 2.

¶ 43 On appeal, the Fourth District emphasized the restrictions we have just discussed. It also emphasized that the treatment program was run by Adams County and that the defendant was ordered to participate in the program. *Id*. ¶ 45. Based on these factors, the

court found that the defendant "had a legal duty to submit" to state authority while he was in the treatment program. *Id*. The court further found that the defendant was in the physical custody of the state during this time. *Id*. For these reasons, the court concluded that the defendant was "in custody" for purposes of mandatory sentence credit while he was in the treatment program. *Id*. ¶ 50. It therefore reversed the trial court's decision to deny him sentence credit for this time. *Id*. ¶ 51.

¶ 44 The defendant in *Darius L*. was likewise adjudicated delinquent and sentenced to probation. His probation included a condition that he successfully complete the same treatment program. *Darius L.*, 2012 IL App (4th) 120035, ¶ 1. His probation was later revoked. As occurred in *Christopher P.*, the trial court sentenced the defendant to the Department of Juvenile Justice and did not give him sentence credit for the time he spent in the treatment program. *Id*. In reversing the trial court's decision to deny the sentence credit, the Fourth District took judicial notice of the details of the treatment program it set forth in *Christopher P*. *Id*. ¶ 41. In light of those factors, the court again concluded that the defendant "had a legal duty to submit to state authority" (*id*.), and that he was therefore entitled to credit against his sentence for the time he spent in the program (*id*. ¶ 48).

¶ 45 This case stands in stark contrast to both *Christopher P*. and *Darius L*. The defendant here participated in a treatment program that was not housed in a county jail or juvenile detention center and was not run by the state or any county. Moreover, the defendant was not ordered to participate in the treatment program. Rather, he was permitted to leave jail without posting the bond he was otherwise required to post in order to attend a treatment program he selected. We conclude that the mandatory sentence credit provision

in section 5-4.5-100(b) is not applicable to the 37 days the defendant spent in substance abuse treatment.

¶ 46 B. Discretionary Sentence Credit

¶ 47 The defendant next argues that the court failed to recognize that it had the discretion to give him credit for the 37 days he spent in treatment and that it therefore failed to exercise the discretion it had. We agree.

¶ 48 Whether to award sentence credit for time spent confined is "a discretionary sentencing matter." *People v. Gonzales*, 314 Ill. App. 3d 993, 999 (2000). We therefore review a court's decision to grant or deny such credit for an abuse of discretion. *Id*. However, if we find that the court failed to exercise its discretion at all, we must reverse. See *People v. Partee*, 268 Ill. App. 3d 857, 869 (1994).

¶ 49 The defendant argues that the exercise of judicial discretion requires a court to engage in a meaningful consideration of the relevant facts and circumstances in making its decision. See *People v. Walker*, 232 Ill. 2d 113, 126 (2009). He argues that the court failed to do so in this case because it found that the treatment program was not custodial without making any inquiry concerning the nature of the program or the types of restrictions placed upon the defendant while he was in the program. We agree.

¶ 50 We find guidance from the Second District's decision in *Gonzales*. That case involved section 5-8-7 of the Code, the predecessor of section 5-4.5-100. The version of the statute in effect at the relevant time gave trial courts the discretion to award sentence credit for time spent in home detention if that time was found to be custodial. *Gonzales*, 314 Ill. App. 3d at 995 (citing 730 ILCS 5/5-8-7(b) (West 1998)). However, the statute

prohibited sentence credit for home detention if the defendant was convicted of a Class X felony. *Id*. (citing 730 ILCS 5/5-8-7(d) (West 1998)). The defendant in that case was released on bond. While on bond, he was permitted to leave his home only to go to work, and he was specifically ordered to remain in his home from 11 p.m. and 6 a.m. every day. *Id*. at 994. The defendant requested credit against his eventual sentence for the time he spent in home detention. The trial court denied his request, finding that he was ineligible for the credit under section 5-8-7(d). *Id*.

¶ 51 On appeal, the Second District first rejected the defendant's argument that the sentence credit was mandatory. *Id*. at 995-96. The court then rejected his argument that the trial court erred in finding that he was ineligible for the sentence credit under section 5-8-7(d) because he was convicted of a drug offense that was not classified. *Id*. at 996-98. Finally, the appellate court considered the defendant's argument that the trial court abused its discretion in refusing to grant him the credit. *Id*. at 998-99. We note that, in light of the court's conclusion that the defendant was ineligible for the credit under section 5-8-7(d), its consideration of this question constituted *dicta*. Nevertheless, we find its reasoning persuasive and instructive.

¶ 52 In finding that the trial court properly exercised its discretion, the Second District stated as follows:

> "When denying the petition for credit, the trial court noted that [the] defendant was permitted to leave home 'six days a week, 11 hours a day for employment.' We conclude that the court's comment qualifies as a finding that the home detention was not 'custodial' under section 5-8-7(b). Because the record reveals that the trial

court was apprised of the restrictions imposed as conditions of [the] defendant's release, the finding was not against the manifest weight of the evidence." *Id*. at 999.

The Second District explained that once the trial court "properly found that [the] defendant's home detention was not custodial," it did not abuse its discretion in denying the defendant's request for sentence credit. *Id*.

¶ 53 Here, by contrast, the court was not apprised of any restrictions imposed on the defendant as part of his treatment program. Thus, unlike the trial court in *Gonzales*, the court in this case was not able to properly consider whether the program was "custodial." We will therefore reverse this matter to the trial court so that it can make that factual determination. If the court determines that the program was "custodial" within the meaning of the discretionary sentence credit provision, it should then decide whether to award the defendant credit for any of the time he spent in the program.

¶ 54 III. CONCLUSION

¶ 55 For the foregoing reasons, we reverse the court's determination of sentence credit. We remand for further proceedings consistent with this decision.

¶ 56 Reversed and remanded.