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FIRST DIVISION
June 8, 2015

No. 1-14-3660
2015 IL App (1st) 143660-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF MARQUIS W., a minor)	
)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 13 JD 358
)	
MARQUIS W., a minor,)	
)	Honorable
)	Terrence V. Sharkey,
Respondent-Appellant.))	Judge Presiding.
)	
)	

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

Held: Juvenile's appeal was not moot; and juvenile was entitled to sentence credit for the days spent in custody.

¶ 1 Respondent Marquis W., a minor, pled guilty to one count of robbery on May 7, 2013.

The trial court sentenced respondent to a mandatory five years' probation, with the first year to

be intensive probation, and 30 days in the Cook County Juvenile Temporary Detention Center. On June 16, 2014, the State filed a petition for supplemental relief, alleging that respondent had violated his probation by committing the offense of possession of a controlled substance. Following a hearing on the petition, the court found that the State met its burden of establishing by a preponderance of the evidence that respondent violated his probation. At the sentencing hearing, the court found that respondent had exhausted all available probation options and committed him to the Department of Juvenile Justice (Department) until his 21st birthday or seven years, whichever came first. The court awarded respondent 152 days of presentence custody credit.

¶ 2 On October 24, 2014, respondent filed a motion to reconsider his sentence, claiming that he was actually entitled to 161 days of credit. He requested credit for time spent prior to his arraignment on the original underlying complaint, as well as credit for time spent when he was awaiting a treatment program to open up. The State challenged the claims. After a hearing, the court awarded respondent additional credit for the days he spent in custody prior to his arraignment on the original underlying complaint, but denied his request for additional days' credit while awaiting a treatment program because the trial court had ordered respondent to go to the Saura Center, but respondent had voluntarily decided to remain in the detention center while he awaited an opening at a different center. The court awarded respondent 156 days of credit. Respondent now appeals.

¶ 3 On appeal, respondent contends that his predispositional order should be amended to reflect the additional days of credit for the time he was in custody while awaiting inpatient treatment, as well as credit for time that he was held in custody following his June 2014, arrest for possession of a controlled substance.

¶ 4 The State initially argues that this issue is moot because respondent was released from custody and placed on aftercare release on December 10, 2014, and respondent's appellate brief was filed on February 3, 2015. The State contends that the December 10, 2014 release from custody makes it impossible for this court to grant him additional credit for his presentencing custody. Respondent maintains that the question is not moot because he is still subject to the possibility of recommitment in the event of a violation of aftercare.

¶ 5 A question is moot when no actual controversy exists or where intervening events occur that render it impossible for the court to grant effectual relief to the complaining party. *People v. S.L.C.*, 115 Ill. 2d 33, 39 (1980). "It is generally held that where the only relief sought is to set aside a sentence, the question of the validity of its imposition becomes moot when the sentence has been served." *In re Napier*, 83 Ill. App. 3d 503, 505 (1980). Under subsections (a) and (b) of section 3-3-8 of the Unified Code of Corrections (730 ILCS 5/3-3-8(a), (b) (West 2008)), a juvenile committed to the Department may be kept on aftercare release until he is 21 years old unless the Prisoner Review Board enters an order releasing him and discharging him from aftercare release. *In re Jabari C.*, 2011 IL App (4th) 100295, ¶ 19. Accordingly, because respondent is subject to revocation of his aftercare release and recommitment for his unserved sentence, we do not consider the present appeal moot. *Id.*

¶ 6 We now turn to the merits of the case. "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). The trial court's application of a statute is subject to *de novo* review. *Id.*

¶ 7 First, respondent contends that he is entitled to sentencing credit for the seven days in March 2013 that he spent in custody while awaiting inpatient treatment at a residential facility. The juvenile court refused to give respondent credit for this period on the ground that it had

ordered respondent to be "released" to the Saura Center, a community-based agency that serves pre- and postdispositional youth awaiting placement in a treatment facility. However, respondent chose not to go to Saura Center, and instead remained in the Department until a different treatment facility had an opening. The trial court stated that it "was his choice and he's ordered *** to abide by the rules and regulations." The court found that in this case he did not abide by the rules and regulations and that he "flat out refused" to go to the Saura Center. Accordingly, the trial court was unwilling to give him credit for that time that he should have been at the Saura Center. Respondent maintains that those days still qualified as custody because he was not allowed to go home.

¶ 8 Illinois law is clear that a juvenile who is committed to the Department for an indeterminate term is entitled to predisposition sentencing credit for "any part of a day for which he spent time in custody." *Rakim V.*, 398 Ill. App. 3d at 1059. The Illinois Supreme Court has defined "custody" for purposes of sentencing credit as "the legal duty to submit" to legal authority and not actual physical confinement. *People v. Beachem*, 229 Ill. 2d 237, 252 (2008). Here, although respondent refused to go to the Saura Center, he was not free to go home and had a legal duty to remain at the Department. Accordingly, we find that defendant should receive credit for those seven days he spent in custody.

¶ 9 Respondent's next argument is that his commitment order should be corrected to reflect credit for the time he spent in custody from June 13, 2014, the day he was arrested for drug possession charges, until July 15, 2014, when the court released him to the care of his mother. Respondent acknowledges that his June 13, 2014, arrest was in a separate case, but argues that because the State later elected to dismiss that case and chose instead to prosecute respondent for violating the terms of his probation by committing the offense, he should be awarded

presentence custody credit for those days. Respondent relies on *People v. Hernandez*, 345 Ill. App. 3d 163, 177 (2004), and *People v. Roberson*, 212 Ill. 2d 430 (2004), in support of his proposition.

¶ 10 In *Hernandez*, the defendant was arrested for aggravated criminal sexual abuse, and then released on bail. After failing to appear, the defendant's bond was revoked and he was later arrested again. The warrant authorizing the defendant's second arrest noted the original violation of aggravated criminal sexual abuse. About four months after the second arrest, the State dismissed the aggravated criminal sexual abuse charge and charged the defendant with violating his bail bond. He was eventually convicted of violating his bail bond. *Hernandez*, 345 Ill. App. 3d at 171.

¶ 11 Following conviction, the defendant argued that he was entitled to credit for the 122 days he was incarcerated following his second arrest but prior to being charged with violating his bail bond. The trial court denied his motion for sentencing credit. On appeal, the appellate court held that defendant was entitled to the credit because the offense underlying the issuance of the original warrant to arrest was aggravated criminal sexual abuse. The second warrant for the defendant's arrest was predicated on his failure to appear in court on the original charge. The second warrant did not formally charge defendant with committing a crime; "it was merely a procedural tool that the trial court was statutorily required to utilize to effect defendant's return so that he could face prosecution on the sexual abuse charge." *Id.* at 170. The court reasoned that if the State had charged the defendant for violating his bail bond when he was arrested, "there would have been no question that he would have been entitled to the credit for time spent in custody." *Id.* at 170-71.

¶ 12 Similarly in *Roberson*, the defendant was arrested for burglary and released on bail. The defendant then failed to appear so he was arrested a second time. Our supreme court reasoned that if he had been charged with failure to appear contemporaneously with the execution of the second arrest warrant, there would be no question that he would have received credit for the time he served while awaiting trial. Instead, he was not charged with failing to appear until about eight months later, prompting the trial court to find that he was not "in custody" on the violation of the bail bond charge during that time. *Roberson*, 212 Ill. 2d at 439. Our supreme court reversed, finding that he was entitled to custody credit.

¶ 13 In the case at bar, respondent was sentenced to five years of probation on June 25, 2013, after pleading guilty to robbery. On June 13, 2014, respondent was arrested and charged for possession of a controlled substance in case number 14 JD 02351. Three days later, on June 16, 2014, the State filed a petition for supplemental relief, alleging that respondent violated probation by committing the offense of possession of controlled substance. Case number 14 JD 02351 was later *nolle prossed*, and the State proceeded solely on its petition for supplemental relief based on respondent's possession of a controlled substance. A hearing was held, after which the trial court found that respondent violated his probation. Accordingly, the question is whether respondent should get credit for the time spent in custody after his arrest for possession of a controlled substance.

¶ 14 Respondent should be credited for 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 2008); *Rakim V.*, 398 Ill. App. 3d at 1061. Here, while respondent was arrested for possession of a controlled substance in a different case, the State eventually dropped that case and used his possession as a violation of probation in the original robbery case. The trial court ultimately resentenced him

based on this violation of probation, which is the sentencing order that is the subject of this appeal. Accordingly, we find that the time spent in custody as a result of his violation of probation should be credited to him.

¶ 15 The State contends that according to section 5-710(1)(a)(v) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/5-710(1)(a)(v) (West 2008)), the court may only grant credit on a sentencing order of detention under a violation of probation for time spent in detention *before* the filing of the petition alleging the violation. The State contends that because the supplemental petition alleging a violation of respondent's probation was filed on June 16, 2014, the only credit that could be awarded would be for time spent in custody prior to June 16, 2014. Respondent replies that while the statute entitles a minor to credit for the time spent in custody before the filing of the violation of probation, it does not limit an award of credit to this period alone. We agree with respondent. Section 5-710(1)(a)(v) of the Act states in relevant part:

"The court may grant credit on a sentencing order of detention entered under a violation of probation or violation of conditional discharge under Section 5-720 of this Article for time spent in detention before the filing of the petition alleging the violation. A minor should not be deprived of credit for time spent in detention before the filing of a violation of probation or conditional discharge alleging the same or related act or acts." 705 ILCS 405/5-710(1)(a)(v) (West 2008).

¶ 16 There is nothing in this statute that says the court may "only" grant credit on a sentencing order for time spent in detention before the filing of the petition alleging the violation. Rather, it allows the court to give credit for the time spent in custody before the filing of the petition, in addition to any credit given for time in custody after the filing of the same petition. Accordingly, we find that respondent should be given credit for both the time spent in custody before the filing

of the violation of probation petition, as well as the time spent after the filing of the probation petition until he was released to his parents. Respondent was released to his parents on July 15, 2014. Accordingly, he was still "in custody" until July 15, 2014, and thus should be given additional sentencing credit.

¶ 17 For the foregoing reasons, we affirm respondent's sentence as modified. We remand with directions to modify the sentencing judgment to reflect the additional days of sentence credit against respondent's sentence for both the time he spent in custody after refusing to go to the Saura Center, as well as the time he spent in custody following his arrest for possession of a controlled substance.

¶ 18 Affirmed as modified and remanded with directions.