

No. 1-11-0572

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re ANTHONY M., A MINOR.</i>)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 09 JD 2807
)	
ANTHONY M., A MINOR.)	Honorable
)	Stuart F. Lubin.
Respondent-Appellant).)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Palmer and Taylor concurred in the judgment.

ORDER

- ¶ 1 *Held:* The mittimus must be corrected where the trial court erred in calculating the number of days of presentence custody credit to which respondent is entitled; we also remand for the trial court to exercise its discretion to determine whether any additional credit should be awarded to respondent for the time he spent in psychiatric and substance abuse treatment.
- ¶ 2 Following a hearing in January 2011, the trial court revoked the probation of 15-year-old respondent Anthony M. and sentenced him to the Department of Juvenile Justice (DOJJ) for a maximum term of five years' imprisonment for the underlying adjudication of delinquency for committing an aggravated battery. On appeal, respondent correctly contends that he is entitled to

receive uncredited time he spent in predisposition custody. Respondent also maintains that he is entitled to additional credit for time spent in psychiatric and substance abuse treatment.

¶ 3 Respondent was arrested on July 12, 2009, for punching Hiroom Mohammed on July 11 following a basketball game at 3232 West Hinsely in Chicago. On July 13, respondent pled guilty to aggravated battery stemming from the above incident, was adjudicated delinquent, and released from custody that same day. On August 27, 2009, the court sentenced respondent to 18 months' probation and granted the probation officer's request to hold him in custody for a substance abuse evaluation; he was released on September 3, 2009.

¶ 4 During the subsequent time period from November 2009 through January 2011, respondent violated probation multiple times, resulting in additional time spent in custody before his ultimate commitment to the DOJJ on January 19, 2011. This appeal concerns the number of days of predisposition custody to which respondent is entitled.

¶ 5 Under the Juvenile Court Act of 1987, a "minor shall be given credit on the sentencing order of detention 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 2010). Time "in detention" includes any time during which a minor is in custody. 705 ILCS 405/5-710(1)(b) (West 2010). Juveniles who have been committed to an indeterminate term in the DOJJ are entitled to sentencing credit for each day spent in presentence custody. *In re Jabari C.*, 2011 IL App (4th) 100295, ¶ 29.

¶ 6 On appeal, respondent initially contended that he was entitled to receive 118 days of time spent in predisposition custody. The State counted 120 days of credit, which respondent agreed to in his reply brief. After a thorough review of the record, we calculate and allow 121 days of predisposition custody based on the following undisputed information in the record.

¶ 7 Respondent's initial arrest on July 12, 2009, and release on July 13, 2009, accounts for two days of credit.

¶ 8 Respondent's original sentence of probation on August 27, 2009, until his release on September 3, 2009, is eight days.

¶ 9 On October 13, 2009, the State filed a petition to revoke respondent's probation, alleging that he committed a criminal trespass. Respondent admitted to violating his probation and, on November 12, 2009, the court recommitted him to probation with orders to successfully complete an inpatient drug program. The court ordered respondent to be held in custody until a progress report on his drug assessment was completed, and respondent was later released on November 19, 2009. November 12 through November 19 is eight days.

¶ 10 On April 14, 2010, the State filed its second petition for supplemental relief, alleging that respondent violated his probation when he was unsuccessfully discharged from an inpatient drug facility for acts of violence and disrespect. On that same date, the court held respondent in custody for a clinical evaluation, and respondent was released on April 28, 2010. Respondent subsequently admitted to violating his probation and the court extended his probation for six months. April 14 through April 28 is 15 days.

¶ 11 On June 3, 2010, the State filed its third petition for supplemental relief, alleging that respondent violated home confinement. The court held him in custody and, on the next court date, respondent admitted to the violation. The court extended his probation for six months and ordered him to be held in custody until June 23. June 3 through June 23 is 21 days.

¶ 12 On June 29, 2010, respondent was arrested and the next day the State filed a fourth petition for supplemental relief alleging that he violated probation by stealing an iPod and possessing cannabis. The court held respondent in custody on June 30, and the State withdrew this petition on July 28, 2010. The court released respondent from custody on July 28, pending

his admission to the Mental Illness and Substance Abuse (MISA) residential treatment facility.

June 29 through July 28 is 30 days.

¶ 13 On December 13, 2010, the State filed its final petition for supplemental relief, alleging that respondent violated his probation when he was unsuccessfully discharged from the MISA inpatient facility. On that same date, the court ordered respondent in custody for two weeks. At the next court hearing on December 27, 2010, respondent admitted he violated his probation, and the court ordered a supplemental social investigation and held respondent in custody until the dispositional hearing. At the subsequent hearing on January 19, 2011, the court revoked respondent's probation and committed him to the DOJJ for up to five years. The court also granted him credit for the 38 days he spent in custody immediately prior to the sentencing hearing. December 13, 2010, through January 18, 2011, is 37 days. January 19 does not count because the day a respondent is sentenced to imprisonment does not count towards presentence credit. See *People v. Williams*, 239 Ill. 2d 503, 510 (2011).

¶ 14 Here, the trial court erred in calculating the number of days of presentence custody credit to which respondent is entitled. We find that respondent is entitled to 121 days' credit for the following dates that he was in custody: July 12, 2009 - July 13, 2009 (2 days); August 27, 2009 - September 3, 2009 (8 days); November 12, 2009 - November 19, 2009 (8 days); April 14, 2010 - April 28, 2010 (15 days); June 3, 2010 - June 23, 2010 (21 days); June 29, 2010 - July 28, 2010 (30 days); December 13, 2010 - January 18, 2011 (37 days). We thus direct the clerk of the circuit court to correct the mittimus to reflect 121 days of presentence custody credit.

¶ 15 Respondent next contends that this court should remand the cause for the trial court to determine whether he is entitled to any additional sentencing credit for time spent in psychiatric and substance abuse treatment.

¶ 16 A trial court has broad discretion in determining an appropriate disposition in delinquency proceedings, and this court should not reverse such a disposition absent an abuse of discretion. *In re A.J.D.*, 162 Ill. App. 3d 661, 666 (1987).

¶ 17 Section 5-4.5-100(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-100(b) (West 2010), provides, in relevant part, that, "the trial court may give credit to the defendant *** when the defendant has been confined for psychiatric or substance abuse treatment prior to judgment."

¶ 18 Here, both parties correctly agree that the trial court has the discretion to award sentencing credit when a respondent has been confined for psychiatric or substance abuse treatment. See *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 43 (stating that the permissive language of section 5-4.5-100(b) of the Code refers to psychiatric or substance abuse treatment). Respondent, however, maintains that the trial court failed to exercise its discretion regarding the issue of sentencing credit for his confinement for substance abuse treatment because it made no comment on the matter. Respondent asserts that the trial court's silence reflects a failure to consider the possibility of granting him this additional sentencing credit.

¶ 19 At the sentencing hearing on January 19, 2011, respondent's probation officer indicated that respondent was unsuccessfully discharged from two treatment facilities. Based on his refusal of services, anger issues, substance abuse problems, refusal to go to school, and involvement in street gangs, respondent's probation officer recommended that respondent be sentenced to the DOJJ. The State agreed with that recommendation. The court then ordered respondent committed to the DOJJ on the aggravated battery charge, noting the offense was a Class 3 felony with an adult maximum of five years' imprisonment.

¶ 20 At sentencing, the presentencing custody credit *mandated* by statute was not considered and not calculated correctly as explained in our holding above. The court allowed only 38 days

of custody credit instead of 121 days. The parties do not dispute and the record shows that respondent also spent time in two different residential treatment facilities, which may or may not warrant sentencing credit under section 5-4.5-100(b). Although a court need not articulate every factor it considers in imposing a sentence (*People v. Martin*, 2012 IL App (1st) 093506, ¶ 48), we cannot presume that *possible* sentencing credit under section 5-4.5-100(b) was considered on the record here because even the *mandatory* sentencing credit was not calculated properly. In light of the affirmative showing of error in calculating the predisposition custody credit here, we remand for the court to exercise its discretion to determine whether or not any additional credit should be awarded under section 5-4.5-100(b). We express no opinion as to whether the court's findings will support any more credit.

¶ 21 For the foregoing reasons, we grant 121 days of presentence custody credit and remand the cause with directions. We affirm the judgment of the circuit court in all other respects.

¶ 22 Affirmed in part; remanded in part.