

No. 1-11-0576

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</i> CARMEN M., A MINOR |) | Appeal from the |
| (THE PEOPLE OF THE STATE OF ILLINOIS, |) | Circuit Court of |
| |) | Cook County. |
| Petitioner-Appellee, |) | |
| |) | |
| v. |) | No. 09 JD 4797 |
| |) | |
| CARMEN M., a minor, |) | Honorable |
| |) | Stuart F. Lubin, |
| Respondent-Appellant). |) | Judge Presiding. |

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Epstein and Pucinski 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.

¶ 2 Respondent Carmen M. was adjudicated delinquent and sentenced to 18 months of probation. Subsequently, the trial court found that respondent violated her probation and committed her to the Department of Juvenile Justice until the age of 21. On appeal, respondent contends that the trial court erred in calculating the number of days of presentence custody credit

to which she is entitled. For the reasons that follow, we affirm and order the mittimus to be corrected to award respondent 43 days' credit.

¶ 3 On November 1, 2009, respondent was arrested by a Chicago police officer. She was not detained in custody. Later that month, the State filed a petition seeking to have her adjudicated delinquent for the offenses of battery and aggravated battery, based on allegations that she knowingly made physical contact of an insulting or provoking nature to the arresting officer. The trial court found probable cause to issue a warrant for respondent's arrest.

¶ 4 On February 19, 2010, the warrant was executed and respondent appeared before the court. The trial court informed respondent of the charges against her and released her to home confinement and evening reporting until trial.

¶ 5 A few weeks later, the trial court issued a warrant for respondent's arrest based on a report that she had been terminated from the evening reporting program due to excessive absences. The warrant was executed on March 15, 2010, and respondent remained in custody until March 18, 2010, when she appeared before the court. On that date, respondent pleaded guilty to the offense of aggravated battery. Thereafter, the trial court sentenced her to 18 months of probation.

¶ 6 About 10 months later, the State filed a petition to revoke respondent's probation, alleging, among other things, that she had been absent from school for almost a month. On October 12, 2010, respondent appeared before the court. The probation officer informed the court of the allegations in the petition, and the trial court ordered respondent held in custody pending a hearing. On October 26, 2010, court convened for a hearing on the petition, but respondent admitted that she violated the terms of her probation. The trial court accepted the admission, found a violation of probation, and re-committed respondent to the 18-month term of probation.

¶ 7 A few months later, the State filed a second petition to revoke probation, alleging that respondent was not living with her sister or father and that her current whereabouts were unknown to her family. The trial court issued a warrant, which was executed on January 10, 2011. Respondent was held in custody from that date until February 1, 2011, when, following a hearing, she was committed to the Department of Juvenile Justice. The trial court indicated that respondent would receive credit for 23 days spent in custody. Defense counsel asked the court for additional days of credit, but the trial court denied the request. This appeal followed.

¶ 8 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 Department of Juvenile Justice are entitled to sentencing credit for each day spent in presentence custody. *In re Jabari C.*, 2011 IL App (4th) 100295, ¶ 29.

¶ 9 On appeal, respondent contends that the trial court erred in calculating the number of days of presentence custody credit to which she is entitled. She argues that she is entitled to a total of 43 days over five different time periods. The State counters that respondent is entitled to a total of 39 days. We address the five time periods identified by respondent in turn.

¶ 10 Respondent first argues that she is entitled to one day of presentence custody credit for November 1, 2009, as she was arrested on that date. "Custody," for purposes of sentencing credit, is defined as the legal duty to submit to legal authority, and does not require actual physical confinement. *Jabari C.*, 2011 IL App (4th) 100295, ¶ 34, citing *People v. Beachem*, 229 Ill. 2d 237, 252 (2008). In the instant case, when respondent was arrested, she had the legal duty to submit to the control of the arresting officers. Accordingly, her arrest fits within the definition

of custody and she is entitled to one day of credit against her sentence for November 1, 2009.

Jabari C., 2011 IL App (4th) 100295, ¶ 35.

¶ 11 Next, respondent argues that she is entitled to one day of presentence custody credit for February 19, 2010. On that date, a warrant for her arrest was executed and respondent appeared before the court, which then released her to home confinement. Again, when respondent was arrested, she was under a legal duty to submit to the arresting officers' control. As such, she was in custody on February 19, 2010, and is entitled to one day of presentence custody credit for that date. *Jabari C.*, 2011 IL App (4th) 100295, ¶ 35.

¶ 12 Third, respondent argues that she is entitled to four days of presentence custody credit for March 15 through 18, 2010. The State counters that respondent is only entitled to three days for this time period. It is true that generally, a defendant is not entitled to presentence custody credit for the day of sentencing, since the day that a defendant's mittimus is issued usually counts as the first day of a defendant's sentence. *People v. Williams*, 239 Ill. 2d 503, 509-10 (2011). However, where a defendant is sentenced to something other than incarceration, he or she is entitled to sentencing credit for that day. *In re Darius L.*, 2012 IL App (4th) 120035, ¶ 48. Here, respondent was sentenced to probation on March 18, 2010. Therefore, she is entitled to presentence custody credit for that day, as she would not otherwise receive that credit toward her eventual sentence to the Department of Juvenile Justice. *Darius L.*, 2012 IL App (4th) 120035, ¶ 48.

¶ 13 Fourth, respondent argues that she is entitled to 15 days of presentence custody credit for October 12 through 26, 2010. The State, in contrast, asserts that she is only entitled to 14 days. On the last day of this time period, respondent was recommitted to probation, as opposed to incarceration. Accordingly, as explained above, she may receive presentence custody credit for that day. *Darius L.*, 2012 IL App (4th) 120035, ¶ 48.

¶ 14 Finally, respondent asserts, and the State agrees, that she is entitled to 22 days of presentence custody credit for January 10 through 31, 2011. The trial court credited respondent with 23 days for this time period. However, because respondent was committed to the Department of Juvenile Justice on February 1, 2011, the trial court should not have given her credit for that day. *Williams*, 239 Ill. 2d at 509-10; *Darius L.*, 2012 IL App (4th) 120035, ¶ 48.

¶ 15 The trial court erred in calculating the number of days of presentence custody credit to which respondent is entitled. Respondent should have received 43 days' credit for time served in presentence custody. We direct the clerk of the circuit court to correct the mittimus to reflect 43 days of presentence custody credit and affirm the judgment of the circuit court in all other respects.

¶ 16 Affirmed; mittimus corrected.