

No. 1-16-0380

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

<i>In re</i> JOHNAYIA W., A MINOR,	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 10 JD 1376
	)	
JOHNAYIA W.,	)	Honorable
	)	Steven Bernstein,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment of the circuit court revoking the stay of the respondent's adult sentence under the extended juvenile jurisdiction provisions of the Juvenile Court Act is affirmed, where the respondent failed to show that the court lacked authority to revoke the stay based upon a recent amendment to the aftercare release provision of the Act. The mittimus will be corrected to give the respondent credit for time served on electronic home monitoring.

¶ 2 The respondent, Johnayia W., was adjudicated delinquent under the extended juvenile jurisdiction provision of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-810 (West

2010)), and sentenced to 15 years' imprisonment, subject to a mandatory stay until she attained the age of 21. The State filed a petition to revoke the stay and execute the 15-year adult sentence after the respondent committed a felony while on aftercare release. The circuit court granted the State's petition and the respondent now appeals, arguing that, based upon recent amendments to the aftercare release provision of the Act (705 ILCS 405/5-750(3.5) (West 2016) (Added by Pub. Act 99-268, § 5 (eff. Jan. 1, 2016))), the court was without authority to revoke the stay of her adult sentence. The respondent also seeks a correction of the mittimus to reflect credit for time she served in both secure custody and electronic home monitoring. For the reasons that follow, we affirm the judgment of the circuit court revoking the stay of the respondent's adult sentence, and order that the mittimus be corrected to include credit for time served by the respondent under electronic home monitoring.

¶ 3 The facts underlying this case are undisputed. On March 31, 2010, the State filed a petition for adjudication of wardship against the respondent under section 5-750 of the Act (705 ILCS 405/5-750 (West 2010)), alleging that she committed the offenses of attempted murder, armed robbery and two counts of aggravated battery against the victim, Raje Shabaji Thakkar.

¶ 4 On March 8, 2011, the State filed a motion to designate the respondent's case as an "extended jurisdiction juvenile" (EJJ) prosecution under section 5-810 of the Act (705 ILCS 405/5-810 (West 2010)). The motion alleged that the respondent was 15 years of age at the time of the alleged acts and that those acts would constitute felonies if committed by an adult. In an EJJ prosecution, if the minor is found guilty, the circuit court must impose both a juvenile sentence and an adult sentence, and must stay the adult sentence with the condition that the minor not violate the terms of the juvenile sentence. 705 ILCS 405/5-810(4) (West 2010); *In re*

*Christopher*, 217 Ill. 2d 348, 355 (2006). The court granted the motion, and the case proceeded as an EJJ prosecution.

¶ 5 On April 5, 2011, the respondent waived her right to trial by jury under section 5-810(3) (705 ILCS 405/5-810(3) (West 2010)), and entered a plea of guilty to attempted murder. In exchange for her plea, it was agreed that the remaining charges against her would be dismissed and that she would receive an indeterminate sentence of 15 years in the Illinois Department of Corrections (Department of Corrections), to be stayed until she reached 21 years of age.

¶ 6 The factual basis for the plea may be summarized as follows. Shortly before midnight on March 29, 2010, Thakkar had returned home from work and was walking up the stairs to his apartment when the respondent struck him on the back of his head with a hammer. Thakkar collapsed to the floor, and the respondent struck him two or three times more. She then dragged him outside to the rear of the building and took his wallet. Thakkar was bleeding profusely but remained conscious and was able to go to the front of the building and crawl to his apartment. Thakkar then fell unconscious and awoke in the hospital, where he remained for two months. He was placed in critical care and remained in a coma for a period of time, and ultimately suffered severe traumatic brain injuries and the loss of his right eye. A neighbor witnessed the respondent and Thakkar in the back of the apartment building and called the police. The respondent was subsequently placed under arrest.

¶ 7 At the police station, the officers obtained the consent of the respondent's mother to speak to her, and the respondent confessed to the crime. She stated that she resided in the apartment building where the crime occurred and that she had planned the occurrence the previous night. According to the respondent, her plan was to rob the upstairs tenant by using a hammer to hit the

man. After she struck Thakkar, she dragged him out of the back door "so no one would see him" and then decided to "drag him into the pond behind her building to get rid of him."

¶ 8 After determining that the respondent's plea was knowing and voluntary and that it had a sufficient factual basis, the court entered a finding of guilty and continued the matter for sentencing. At the sentencing hearing, the respondent introduced evidence of her social history, including instances of her prior sexual and physical abuse. On April 19, 2011, in compliance with the plea agreement, the trial court sentenced the respondent to an indeterminate period in the Illinois Department of Juvenile Justice to end no later than her 21st birthday. 705 ILCS 405/5-750(2) (West 2010). In addition, pursuant to the EJJ provisions of section 5-810 of the Act, the court sentenced the respondent to 15 years' imprisonment followed by 3 years' mandatory supervised release, to be imposed only if the respondent failed to successfully complete her juvenile sentence.

¶ 9 On December 13, 2011, the respondent was discharged from an Illinois Department of Juvenile Justice youth center and placed on aftercare release, known at that time as parole. Between mid-2012 and mid-2014, the respondent's parole was revoked three times due to her various violations.

¶ 10 On August 27, 2015, the State filed a petition to revoke the stay of the respondent's adult sentence (hereinafter the petition) under section 5-810(6) of the Act (705 ILCS 405/5-810(6) (West 2012)) on the basis that she had committed a new offense. The petition alleged that, on July 24, 2015, the respondent pled guilty to a charge of felony retail theft from a store in Wisconsin, committed in November 2014. She was being held in the custody of the Illinois Department of Juvenile Justice based upon a prior arrest warrant for being absent without leave (AWOL). The petition requested that the court revoke the stay of the respondent's adult sentence

of 15 years' incarceration in the Department of Corrections, execute that sentence under section 810(4)(ii) of the Act (705 ILCS 405/5-810(4)(ii) (West 2012)), and terminate the respondent's EJJ status.

¶ 11 On September 9, 2015, the circuit court entered an order mandating that the respondent remain in custody at the Illinois Department of Juvenile Justice "until Cook County is able to come and pick her up." The court set the next hearing date for September 22, 2015.

¶ 12 At the scheduled hearing date, the State tendered to the court a certified copy of the respondent's Wisconsin conviction of felony retail theft. The respondent then filed a motion for a continuance, which the circuit court granted, setting December 15, 2015, as the new hearing date for the petition.

¶ 13 On December 15, 2015, over objection by the State, the respondent again sought a continuance for the hearing on the petition. However, counsel for the respondent agreed to stipulate that the respondent had in fact pled guilty to the charges of felony retail theft as stated in the certified copy of conviction tendered by the State. The court continued the matter until February 2, 2016, ordering that the respondent continue in the custody of the Illinois Department of Juvenile Justice until she could be picked up by the Department of Corrections.

¶ 14 At the February 2, 2016, hearing, the parties entered into a stipulation that an assistant district attorney from Dane County, Wisconsin, would testify that the respondent pled guilty to both the offense of felony retail theft which occurred November 28, 2013, and misdemeanor retail theft, which occurred on April 20, 2015. Following the stipulation, the court granted the petition and, finding the respondent in violation of her "probation," vacated the stay of the respondent's adult sentence, and executed on her 15-year sentence in the Department of Corrections. The instant appeal followed.

¶ 15 The respondent first argues that the circuit court was without authority on February 2, 2016, to revoke the stay of her adult sentence, based upon a recent addition to section 5-750 of the Act which reduces the amount of time minors may spend in aftercare release. Specifically, the legislature amended the Act to add section 5-750(3.5), which became effective on January 1, 2016. That section provides, in relevant part, as follows:

"(3.5) Every delinquent minor committed to the Department of Juvenile Justice under this Act shall be eligible for aftercare release without regard to the length of time the minor has been confined or whether the minor has served any minimum term imposed. Aftercare release shall be administered by the Department of Juvenile Justice, under the direction of the Director. Unless sooner discharged, the Department of Juvenile Justice shall discharge a minor from aftercare release upon completion of the following aftercare release terms:

(a) One and a half years from the date a minor is released from a Department facility, if the minor was committed for a Class X felony." 705 ILCS 405/5-750(3.5) (West 2016) (Added by Pub. Act 99-268, § 5 (eff. Jan. 1, 2016)).

¶ 16 The respondent argues that, by the time section 5-750(3.5) came into effect, she had already completed in excess of one-and-a-half years of aftercare release. Accordingly, she maintains that, by January 1, 2016, her juvenile sentence was complete and the circuit court was compelled to release her. She also contends that the court no longer had authority to revoke the stay of her adult sentence on February 2, 2016.

¶ 17 The State initially argues that the respondent has forfeited this argument by failing to file a post-sentencing motion or to otherwise contest her sentence before the circuit court. See *People v. Baez*, 241 Ill. 2d 44, 129-30 (2011). The respondent appears to concede such

forfeiture, raising as alternative arguments that her trial counsel's failure to challenge her sentence constituted ineffective assistance of counsel (*Strickland v. Washington*, 466 U.S. 668 (1984)), or that the court's decision amounted to plain error. We point out that forfeiture is a limitation on the parties and not the court. *People v. Sangster*, 2014 IL App (1st) 113457, ¶ 66. As we are required to examine the applicability of 5-750(3.5) to this case in order to resolve the respondent's claim of the ineffective assistance of her counsel, we will relax the rules of forfeiture, and proceed to the merits of her argument on appeal. *Cf. People v. Bailey*, 311 Ill. App. 3d 265, 270 (2000).

¶ 18 "When construing a statute, our primary objective is to ascertain and give effect to legislative intent, the surest and most reliable indicator of which is the statutory language itself, given its plain and ordinary meaning." *In re M.I.*, 2013 IL 113776, ¶ 15. In determining the plain meaning of the statutory language, we consider the statute as a whole, "keeping in mind the subject it addresses and the apparent intent of the legislature in enacting it." *Id.* (citing *People v. Perry*, 224 Ill. 2d 312, 323 (2007)). We will not read into the statute any provisions, limitations or conditions that are not clearly expressed by the legislature. *People ex rel. Birkett v. Dockery*, 235 Ill. 2d 73, 81 (2009). Where the statutory language is clear and unambiguous, we will apply it as written and will not resort to other aids of construction. *In re Christopher*, 217 Ill. 2d at 364. An issue of statutory interpretation presents a question of law and is therefore subject to the *de novo* standard of review. *In re Jaime P.*, 223 Ill. 2d 526, 532 (2006).

¶ 19 The respondent devotes much of her argument on appeal to the proposition that subsection 5-750(3.5) must be applied retroactively to her case. She points to the broad wording of the statute, rendering "every delinquent minor" eligible for aftercare release, regardless of the length of her confinement or whether she has served any minimum imposed term. She also notes

the lack of any expressed intention by the legislature to confine the statute's application solely to juveniles sentenced after its effective date.

¶ 20 We conclude that, based upon the plain language of section 5-750(3.5), we need not reach the issue of the statute's retroactive application under the facts of this case. Even assuming, without deciding, that the subsection is applicable to juveniles sentenced prior to January 1, 2016, the statute has no bearing upon the respondent's case or the circuit court's authority to revoke the stay of her adult sentence.

¶ 21 At the outset, we note that the clear purpose of section 5-750(3.5) is to provide for wide accessibility of minor-respondents to aftercare release and then, as a departure from prior enactments of the statute, to limit the terms of such release upon its successful completion. See, *e.g.*, 705 ILCS 405/5-750(3) (West 2012). The section speaks only to a juvenile's eligibility to be considered by the court for aftercare release. Nothing in section 5-750(3.5) purports to mitigate or otherwise impede any sentence already imposed by the court under the Act. Nor could a statute governing parole permissibly do so; our courts have made clear that the terms and conditions of parole are distinct from the sentence itself, and have no effect upon the penalty as pronounced by the court. *Harris v. Irving*, 90 Ill. App. 3d 56, 61-62 (1980) (citing *People ex rel. Kubala v. Kinney*, 25 Ill. 2d 491, 495 (1970) (parole purely a matter of legislative grace, and does not pertain to sentence, but only to where sentence will be carried out)). More importantly, the relief sanctioned under section 5-750(3.5) directs the court to discharge the minor "from aftercare release" upon her successful completion of the specified term. As discussed below, however, as of the statute's effective date of January 1, 2016, the respondent here was neither on aftercare release, nor could she be considered to have completed her sentence.

¶ 22 Section 5-810 states, in relevant part, that:



"(6) When it appears that a minor convicted in an extended jurisdiction juvenile prosecution \*\*\* has violated the conditions of his or her sentence, or is alleged to have committed a new offense upon the filing of a petition to revoke the stay, the court may, without notice, issue a warrant for the arrest of the minor. After a hearing, if the court finds by a preponderance of the evidence that the minor committed a new offense, the court shall order execution of the previously imposed adult criminal sentence. \*\*\* Upon revocation of the stay of the adult criminal sentence and imposition of that sentence, the minor's extended jurisdiction juvenile status shall be terminated. The on-going jurisdiction over the minor's case shall be assumed by the adult criminal court and juvenile court jurisdiction shall be terminated and a report of the imposition of the adult sentence shall be sent to the Department of State Police.

(7) Upon successful completion of the juvenile sentence the court shall vacate the adult criminal sentence." 705 ILCS 405/5-810(6), (7) (West 2012).

¶ 23 Section 3-3-9 of the Unified Code of Corrections (Unified Code) also provides:

"The Board may revoke parole, aftercare release, or mandatory supervised release for violation of a condition for the duration of the term and for any further period which is reasonably necessary for the adjudication of matters arising before its expiration. The issuance of a warrant of arrest for an alleged violation of the conditions of parole, aftercare release, or mandatory supervised release shall toll the running of the term until the final determination of the charge. When parole, aftercare release, or mandatory supervised release is not revoked that period shall be credited to the term \*\*\*." 730 ILCS 5/3-3-9(b) (West 2014).

¶ 24 The record indicates that the respondent was removed from aftercare release on August 4, 2015, when she was taken into custody by the Illinois Department of Juvenile Justice pursuant to the State's petition to revoke the stay of her adult sentence, which was based upon her commission of a new offense of felony retail theft. Under section 3-3-9(b), the respondent could remain off of aftercare release for any length of time that was "reasonably necessary for the adjudication" of the violation underlying the revocation of her aftercare release. In addition, her arrest for the underlying violation operated to toll her term of aftercare release "until the final determination of the charge" pending against her. 730 ILCS 5/3-3-9(b) (West 2012). When the period of aftercare release has been tolled and the minor-respondent is in custody, she is no longer deemed to be on parole or aftercare release. *Accord, People v. Bethel*, 2012 IL App (5th) 100330, ¶ 17 ("toll" defined as "to stop the running of; to abate"); *People v. Steward*, 406 Ill. App. 3d 82, 94 (2010). Indeed, the purpose of such a tolling provision is apparent, in that it operates to preserve the jurisdiction of the court to rule upon the pending charge underlying the petition to revoke parole. See *In re Thompson*, 79 Ill. 2d 262, 267 (1980) (holding that the expiration of a period of probation during the pendency of a petition to revoke such probation does not divest the court of authority to rule on the petition); *People v. Fischer*, 2013 IL App 110193, ¶ 42.

¶ 25 The record indicates that the respondent was in custody from August 4, 2015 through February 2, 2016, when the court entered its order finding her guilty of the new offense and vacating the stay of her adult sentence. Therefore, under section 5-810(6) of the Act and section 3-3-9(b) of the Unified Code, her aftercare release term was tolled during this period. Accordingly, on January 1, 2016, when section 5-750(3.5) of the Act came into effect, the respondent was not eligible for relief under that section, as she was no longer on aftercare

release. Also, considering that the respondent had a pending petition to revoke the stay of her adult sentence as of January 1, 2016, it cannot reasonably be argued that she had "completed her sentence" as of that time.

¶ 26 For these reasons, the circuit court was within its authority to consider and rule upon the State's petition to revoke the stay of the respondent's adult sentence on February 2, 2016. See 705 ILCS 405/5-755 (West 2010); *Jaime*, 223 Ill. 2d at 533-34; *In re Christopher*, 217 Ill. 2d at 370 (juvenile court retains jurisdiction over case of delinquent minor until majority or the completion of her sentence, or until stay of adult sentence is revoked under EJJ provision). We make no judgment as to whether the respondent may have been entitled to relief under section 5-750(3.5) had the underlying felony theft ultimately not been proven.

¶ 27 The respondent asks that we correct the mittimus in this case to reflect credit for a total of 1259 days she spent in secure and non-secure custody following her adjudication of delinquency.

¶ 28 After imposing the sentence of 15 years' imprisonment upon the respondent, to be served at 85%, the court entered an order allowing her credit for 856 days she spent in secured custody. She now disputes this figure, claiming that she actually had served 869 days. In addition, the respondent argues that she should be entitled to an additional 390 days credit for time she served under electronic home monitoring.

¶ 29 When considering a challenge to an award of sentencing credit, we employ the *de novo* standard of review. *People v. Williams*, 239 Ill. 2d 503, 506 (2011). As observed by both parties, a claim regarding the statutory right to credit for time served is not subject to forfeiture and may be raised for the first time on appeal. *People v. Whitmore*, 313 Ill. App. 3d 117, 121 (2000).

¶ 30 Our review of the record reveals that the respondent spent a total of 856 days in secured custody with the Illinois Department of Juvenile Justice. We find no basis for her calculation of 869 days, and therefore reject this portion of her argument.

¶ 31 Her request for credit for her electronic home monitoring, however, is more problematic.

¶ 32 Under section 5-4.5-100(b) of the Unified Code, a defendant is entitled to statutory credit for time spent in custody as a result of the offense for which the sentence was imposed. 730 ILCS 5/5-4.5-100(b) (West 2014). Section 5-4.5-100(b) also provides that, "[e]xcept when prohibited by subsection (d)," the trial court "shall give credit to the defendant for time spent in home detention\*\*\*." *Id.* "Home detention" is defined as "the confinement of a person convicted [of] \*\*\* an offense to his or her place of residence under the terms and conditions established by the supervising authority." 730 ILCS 5/5-8A-2 (West 2012).

¶ 33 In response, the State does not dispute that the respondent's time under electronic home monitoring constituted time in custody within the meaning of the Unified Code. The State does contend, however, that her request for credit is prohibited under subsection 5-4.5-100(d) as stated above. That section states as follows:

"NO CREDIT; SOME HOME DETENTION. An offender sentenced to a term of imprisonment for an offense listed in paragraph (2) of subsection (c) of Section 5-5-3 (730 ILCS 5/5-5-3) \*\*\* shall not receive credit for time spent in home detention prior to judgment." 730 ILCS 5/4.5/100(d) (West 2014).

¶ 34 Paragraph 2(c) of section 5-5-3 includes the offense of attempted first degree murder. 730 ILCS 5/5-5-3(c)(2) (West 2014). Thus, the State argues, as the respondent was adjudicated delinquent based upon attempted first-degree murder, she is barred from receiving credit for home electronic monitoring. We disagree.

¶ 35 Section 5-4.5-100(d) applies specifically to time spent in home monitoring "prior to judgment." The credit the respondent seeks here, however, was for periods of time she spent under home monitoring *after* the entry of a judgment against her. The Code of Criminal Procedure defines "judgment" as an adjudication by the court that the defendant is guilty of the offense as charged, and the consequent imposition of sentence upon her. 725 ILCS 5/102-14 (West 2014); see also *People v. Woolsey*, 139 Ill. 2d 157, 161 (1990). In April 2011, the respondent was adjudicated delinquent based upon her plea of guilty to attempted murder, and sentenced under section 5-750 of the Act (705 ILCS 405/5-750(2) (West 2010)) to an indeterminate term in the custody of the Department of Juvenile Justice until she reached age 21. This adjudication and sentence constituted a "judgment" within meaning of section 5/102-14 above. See *People ex rel. Devine v. Stralka*, 226 Ill. 2d 445, 456 (2007) (finding of delinquency is tantamount to a finding of guilt in a juvenile delinquency case, and that finding coupled with the disposition is a final and appealable judgment). The periods of electronic home monitoring for which the respondent seeks credit began in December 2011, and were incident to her aftercare release. Therefore, the State's argument on this point is unavailing. See *In re J.T.*, 221 Ill. 2d 338, 351-53 (2006).

¶ 36 In this case, the orders at issue placed the respondent on electronic home monitoring subject to explicit terms and conditions imposed upon her by "the supervising authority" (730 ILCS 5/5-8A-2 (West 2012)), namely, the prisoner review board of the Illinois Department of Juvenile Justice. Her failure to comply with these conditions could have resulted in her return to secure custody. As such, she was deemed to be "in custody" during the time of home monitoring within the meaning of section 5-4.5-100 of the Unified Code, and was entitled to commensurate statutory credit. We, accordingly, order that the mittimus be corrected to award the respondent

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an additional 390 days credit towards her sentence, reflecting the periods she spent on electronic home monitoring between December 13, 2011 and January 23, 2014.

¶ 37 For the foregoing reasons, we affirm the circuit court's judgment revoking the stay of the respondent's adult sentence and ordering that the sentence of 15 years' imprisonment be carried out. We order that the mittimus be corrected to reflect credit for 390 days of electronic home monitoring.

¶ 38 Affirmed; mittimus corrected.