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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re AUSTIN B., a Minor,)	Appeal from the Circuit Court
)	of Ogle County
)	
)	No. 15-JD-34
)	
)	Honorable
(People of the State of Illinois, Petitioner-Appellee)	John B. Roe,
v. Austin B., Respondent-Appellant).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Burke and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* Juvenile was not entitled to sentencing credit against residential placement imposed as a condition of probation.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Austin B., appeals an order of the circuit court of Ogle County denying his petition for immediate release from custody. Respondent, a minor, pleaded guilty to the misdemeanor offense of criminal sexual abuse. He received a sentence of 48 months' probation. As a condition of probation, respondent was required to reside in a facility known as Focus House. Respondent asserts that he has been held at Focus House longer than allowed by statute. We disagree and affirm the order of the circuit court.

¶ 4

II. BACKGROUND

¶ 5 In July 2015, respondent, who was then 12 years old, was arrested. The State filed a petition for adjudication of wardship alleging one count of aggravated criminal sexual abuse and one count of aggravated criminal sexual assault. Guardianship of respondent was given to Ken Burn (Director of Court Services for Ogle County). Respondent was placed at Focus House, which the petition stated was “an Ogle County youth shelter facility with structured 24 hour supervision.” The petition also stated that this placement was “[i]n lieu of being placed in a secure detention facility.” The petition was amended to add a third count, which alleged aggravated criminal sexual abuse. Respondent pleaded guilty to the third count (a misdemeanor), and the other two counts were dismissed.

¶ 6 Respondent was sentenced to 48 months’ probation. The probation order named Ken Burn as respondent’s guardian. It further stated that respondent “will follow all Focus House rules” and that he “will do whatever the Focus House staff tells him to do.”

¶ 7 On December 5, 2017, respondent moved to be discharged from custody. He pointed out that he had been in custody at Focus House since July 16, 2015. He cited section 5-710(1)(a)(viii) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-710(1)(a)(viii) (West 2016)), which provides that a juvenile may be “placed in detention *** for a period not to exceed the period of incarceration permitted by law for adults found guilty of the same offense or offenses for which the minor was adjudicated delinquent.” He then argued that since he had pleaded guilty to a misdemeanor, the longest he could be detained was 364 days. As he had been at Focus House for longer than that period, he continued, he was entitled to be released. The State countered that Focus House was not a “detention facility” and that, therefore, respondent was not “in custody” while at that facility.

¶ 8 The trial court agreed with the State. Relying primarily on the fact that Focus House is not a secure facility (it noted, for example, that bedroom doors are not locked), it found that respondent was “not in custody at Focus House for the purpose of calculating credit for time served.” Respondent filed a motion to reconsider. The trial court denied the motion, relying on what it termed the “unique nature of Focus House.” By this it meant that Focus House is a non-secure, county-run facility. Respondent now appeals.¹

¶ 9

III. ANALYSIS

¶ 10 This appeal requires that we address two issues. First, we must consider the State’s contention that this appeal is moot. Second, we must address respondent’s argument that he is being held beyond the time authorized by statute.

¶ 11

A. Mootness

¶ 12 The State argues that this appeal is (or will soon be) moot due to respondent’s allegedly imminent release from custody. A similar argument was rejected in *In re Christopher P.*, 2012 IL App (4th) 100902, ¶ 18. In that case, the court considered whether a juvenile was entitled to credit for time served in a county-run treatment program, which sought to modify a participant’s behavior so that he or she would “avoid future trouble with the law.” *Id.* ¶ 11. The respondent in that case had been released from custody by the time the court addressed the appeal. *Id.* ¶ 19. Nevertheless, the court addressed the appeal, citing the public-interest exception to the mootness doctrine. *Id.* ¶ 23. Application of the exception requires three criteria: (1) a question of public importance must exist; (2) authoritative guidance on the question is needed; and (3) the question

¹ This is an accelerated appeal pursuant to Illinois Supreme Court Rule 660A (eff. July 1, 2018). Our disposition was due within 150 days after the filing of the notice of appeal. However, good cause is shown for the delay in light of the scheduling of oral argument in this case.

will likely recur. *Id.* ¶ 20. The *Christopher P.* court found the first criteria was met, as the detention of a juvenile is a matter of public import. *Id.* ¶ 21. Further, the situation is likely to recur, for other juveniles may be detained under similar circumstances. *Id.* Finally, the court determined that guidance was lacking on this particular situation. *Id.* ¶ 23. Here, the considerations informing the first and third criteria are virtually identical. As for the second, we note that the unique nature of Focus House renders the application of existing precedent uncertain and in need of “authoritative determination.” As such, assuming, *arguendo*, that this case is moot, the public-interest exception would render our review appropriate.

¶ 13 B. Whether Respondent is Entitled to Release

¶ 14 Turning to the merits, the sole issue remaining in this appeal is whether the time respondent has spent at Focus House entitles him to be released. To resolve this issue, we must examine a number of statutes. Accordingly, our review is *de novo*. See *People v. Beachem*, 229 Ill. 2d 237, 243 (2008). Findings of historical fact are, as always, reviewed using the manifest-weight standard. *In re Mario T.*, 376 Ill. App. 3d 468, 472 (2007).

¶ 15 Respondent notes that section 5-710(1)(b) of the Act (705 ILCS 405/5-710(1)(b) (West 2016)) states, in pertinent part: “The court shall include in the sentencing order any pre-custody credits the minor is entitled to under Section 5-4.5-100 of the Unified Code of Corrections.” Section 5-4.5-100(b) of the Unified Code of Corrections, provides: “[An] offender shall be given credit on the determinate sentence or maximum term and the minimum period of imprisonment for the number of days spent in custody as a result of the offense for which the sentence was imposed. Generally, juveniles are entitled to the same credit for time spent in custody as adults. See *In re J.T.*, 221 Ill. 2d 338, 353-54 (2006). Hence, the parties and the trial court focused their

analysis on whether respondent's placement at Focus House was custodial such that respondent was entitled to release based on the amount of time he had spent there.

¶ 16 However, neither the parties nor the court ever specifically addressed the threshold question of whether respondent's stay at Focus House should be treated like a sentence to be served and to which credit for presentence detention might apply. We hold that it is not.

¶ 17 As a consequence of respondent's guilty plea, the trial court imposed a sentence of probation. This is authorized by section 5-710(1)(a)(i) Act (705 ILCS 405/5-710(1)(a)(i) (West 2016)). Possible conditions of probation are set forth in section 5-715(2)(e) Act (705 ILCS 405/5-710(2)(e) (West 2016)), which states, *inter alia*: "The court may as a condition of probation or of conditional discharge require that the minor *** attend or reside in a facility established for the instruction or residence of persons on probation." Respondent does not argue or attempt to establish that Focus House is not such a facility (the record indicates that it is run by the probation department). There is no limitation expressed in the statute regarding the amount of time a minor may be placed in this manner (except, obviously, the length of probation).²

¶ 18 By way of comparison, we note that before the trial court, respondent relied on section 5-710(1)(a)(viii) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-710(1)(a)(viii) (West 2016)), which provides that a juvenile may be "placed in detention under Section 3-6039 of the Counties Code for a period not to exceed the period of incarceration permitted by law for adults found guilty of the same offense or offenses for which the minor was adjudicated delinquent."

² We note that respondent's placement could also be authorized by section 5-710(1)(a)(ii) of the Act (705 ILCS 405/5-710(1)(a)(ii) (West 2016)) along with section 5-740(1)(e) (705 ILCS 405/5-740(1)(e) (West 2016)).

Section 3-6039 concerns impact incarceration. See 55 ILCS 5/3-6039 (West 2016)). It defines impact incarceration as follows:

“The county juvenile impact incarceration program shall include, among other matters, mandatory physical training and labor, military formation and drills, regimented activities, uniformity of dress and appearance, education and counseling, including drug counseling if appropriate, and must impart to the delinquent minor principles of honor, integrity, self-sufficiency, self-discipline, self-respect, and respect for others.” 55 ILCS 5/3-6039(c) (West 2016)).

As Focus House is not such a program, the time limitation contained in subsection 5-710(1)(a)(viii) of the Act does not apply here. More importantly, the subsection authorizing respondent’s placement at Focus House contains no similar limitation. Thus, we are unable to discern an intent by the legislature that placement at a group home as a condition of probation be limited in the same way as a sentence of detention or commitment.

¶ 19 We emphasize that the question presented in this case is not whether time spent at a facility like Focus House would constitute a credit, for example, against a sentence of commitment to the Department of Juvenile Justice imposed or served later, such as after a revocation of probation. Indeed, there are statutes that cover such an eventuality. See 705 ILCS 405/5-710(1)(b) (West 2016)); 730 ILCS 5/5-4.5-100(b) (West 2016); *c.f.*, *In re Montrell S.*, 2015 IL App (4th) 150205 (holding minor entitled to credit for time spent on electronic home detention). Again, the issue here is whether respondent is entitled to credit to lessen the time spent in a residential placement imposed as a condition of probation.

¶ 20 In sum, we hold that respondent’s placement at Focus House was not a sentence to be served in the same sense that, for example, a commitment to the Department of Juvenile Justice

(see 705 ILCS 405/5-750 (West 2016)) would be. It is also not the sort of placement that can be shortened by the application of presentencing credit. As such, the question of whether a placement at Focus House is custodial—for the present purposes—is beside the point.

¶ 21

IV. CONCLUSION

¶ 22 In light of the foregoing, the order of the circuit court of Ogle County is affirmed.

¶ 23 Affirmed.