IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

STATE OF FLORIDA,

Appellant,

v. Case No. 5D19-735

S.A., A CHILD,

Appellee.

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Opinion filed October 25, 2019

Appeal from the Circuit Court
for Orange County,
Timothy R. Shea, Judge.

Ashley Moody, Attorney General, Tallahassee, and Andrea K. Totten, Assistant Attorney General, Daytona Beach, for Appellant.

Davi Toole, Office of Criminal Conflict & Civil Regional Counsel, Casselberry, for Appellee.

HARRIS, J.

The State timely appeals S.A.'s sentence, arguing that the trial court erred when, contrary to section 790.22(9), Florida Statutes (2018), it credited S.A. with time served in detention prior to adjudication. Because the fifteen-day minimum detention period is mandatory and the trial court lacked discretion to credit S.A. with time served, we reverse.

The State charged S.A. with improper exhibition of a firearm, discharging a firearm in public, and possession of a firearm by a minor. She ultimately entered into a plea agreement, the terms of which included twelve months of supervised probation, a withhold of adjudication, a driver's license suspension, community service, counseling, and fifteen days in juvenile detention. The court was advised that, prior to entering the plea, S.A. already served thirty days in juvenile detention. The State argued that because the offense involved the use and possession of a firearm, this was S.A.'s first offense, and S.A. was not committed to a residential program, the statute prohibited credit for time served. Notwithstanding the State's argument, the court credited S.A. with fifteen days' time served.

The language in the controlling statute under which S.A. was sentenced is clear. Section 790.22(9), Florida Statutes (2018), provides:

> (9) Notwithstanding s. 985.245, if the minor is found to have committed an offense that involves the use or possession of a firearm, as defined in s. 790.001, other than a violation of subsection (3), or an offense during the commission of which the minor possessed a firearm, *and* the minor is *not* committed to a residential commitment program of the Department of Juvenile Justice, in addition to any other punishment provided by law, the court *shall* order:
>
> (a) For a first offense, that the minor shall serve a minimum period of detention of 15 days in a secure detention facility; and
>
> 1. Perform 100 hours of community service; and may
>
> 2. Be placed on community control or in a nonresidential commitment program.

(Emphasis added). Section 790.22(9) also provides that "[t]he minor *shall not* receive credit for time served before adjudication." (Emphasis added).

Here, the record demonstrates that S.A. pled guilty to an offense that involved the use or possession of a firearm, that this was her first offense involving a firearm, and that she was not committed to a residential program. Therefore, the requirements of the statute are clear—S.A. shall serve a minimum period of detention of fifteen days in a secure detention facility. § 790.22(9), Fla. Stat. (2018); see also State v. I.J., 258 So. 3d 473, 478 (Fla. 4th DCA 2018); State v. C.R., 959 So. 2d 1249, 1250 (Fla. 2d DCA 2007); State v. R.C.S., 837 So. 2d 517, 518 (Fla. 3d DCA 2003); State v. S.T., 803 So. 2d 782, 783 (Fla. 4th DCA 2001); State v. P.P., 763 So. 2d 554, 555 (Fla. 4th DCA 2000) (all holding that language of section 790.22(9) is mandatory and failure to impose mandatory sentence on juvenile was erroneous).

When the trial court inquired about credit for time served, the State correctly noted that the statute prohibited the court from reducing the mandatory detention sentence by any amount to reflect time that the juvenile spent in pre-adjudication detention. The State also relies on (and provided to the trial court) State v. J.Z., 957 So. 2d 45 (Fla. 3d DCA 2007), a case that we find both factually and legally indistinguishable from this case. In J.Z., the trial court adjudicated a minor guilty of carrying a concealed weapon and possession of a firearm by a minor. 957 So. 2d at 46. It was the minor's first offense involving the use or possession of a firearm. Id. The court withheld an adjudication of delinquency, credited the minor for time served, and the State appealed. Id. We adopt the well-reasoned analysis and conclusion of our sister court, which held that:

> [S]ection 790.22(9) expressly states that "[t]he minor *shall not* receive credit for time served before adjudication" (emphasis added). . . . While section 790.22 does not contain any express restriction on the court's discretion to withhold adjudication, it does contain an express restriction on the court's discretion to credit a minor with time served before

> adjudication. [T]he use of the word "adjudication" in section 790.22(9) meant formal disposition of the charge. . . . Here the formal disposition of the charge occurred when the trial court withheld adjudication.
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> Accordingly, because the fifteen-day minimum detention period is mandatory . . . the trial court lacked discretion to credit a minor with the time served prior to adjudication[.]

Id. at 47 (internal citations removed).

Despite being presented with J.Z., a case directly on point, the trial court nonetheless opted to award the credit. The trial judge "justified" his ruling by finding that J.Z. was from the Third District, and "we don't have any case law from the Fifth District." The judge stated his personal opinion that any accused person who enters a plea should be given credit for time served. After being reminded that his decision was contrary to J.Z. and the plain language of the statute, the judge stated, "let's see what the Fifth [District] says about this" and "I'll wait until the Fifth District Court of Appeal says I'm wrong." This was improper.

The trial court was obligated to follow the Third District's holding in J.Z. As the Florida Supreme Court made clear in Pardo v. State:

> In the absence of interdistrict conflict, district court decisions bind all Florida trial courts. Weiman v. McHaffie, 470 So. 2d 682, 684 (Fla. 1985). The purpose of this rule was explained by the Fourth District in State v. Hayes: The District Courts of Appeal are required to follow Supreme Court decisions. As an adjunct to this rule it is logical and necessary in order to preserve stability and predictability in the law that, likewise, trial courts be required to follow the holdings of higher courts—District Courts of Appeal. The proper hierarchy of decisional holdings would demand that in the event the only case on point on a district level is from a district other than the one in which the trial court is located, the trial court be required to follow that decision. Alternatively, if the district court of the

> district in which the trial court is located has decided the issue the trial court is bound to follow it.

596 So. 2d 665, 666–67 (Fla. 1992) (quoting State v. Hayes, 333 So. 2d 51, 53 (Fla. 4th DCA 1976)).

For these reasons, we hold that the trial court erred when it declined to follow the holding in J.Z., and awarded S.A. credit for time served prior to the formal disposition of her charge. We reverse the portion of S.A.'s sentence awarding credit for time served and remand for proceedings consistent with this opinion.

REVERSED and REMANDED.

COHEN and LAMBERT, JJ., concur.