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NATURE OF THE ACTION

The People appeal the appellate court's judgment reversing defendant's conviction of knowingly failing to report to a penal institution in violation of 720 ILCS 5/31-6(a) (2014). Following felony convictions of burglary and unlawful use of a debit card, defendant twice violated her probation. In the ensuing revocation proceedings, a temporary recognizance bond required her to live in an extended residential care halfway house and, upon discharge, report immediately to the Whiteside County Jail. When defendant left the halfway house, she failed to report to jail. After a stipulated bench trial, the trial court found defendant guilty. The appellate court reversed, holding that section 31-6(a) did not apply because defendant was not "in custody" at the halfway house.

ISSUE PRESENTED FOR REVIEW

Whether a convicted felon who knowingly fails to report to a penal institution violates 720 ILCS 5/31-6(a).

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 604(a)(2), and 612(b)(2). On January 18, 2018, this Court allowed the People's petition for leave to appeal.

STATUTORY PROVISION INVOLVED

720 ILCS 5/31-6 provides in relevant part:

Escape; failure to report to a penal institution or to report for periodic imprisonment.

(a) A person convicted of a felony or charged with the commission of a felony, or charged with or adjudicated delinquent for an act which, if committed by an adult, would constitute a felony, who intentionally escapes from any penal institution or from the custody of an employee of that institution commits a Class 2 felony; however, a person convicted of a felony, or adjudicated delinquent for an act which, if committed by an adult, would constitute a felony, who knowingly fails to report to a penal institution or to report for periodic imprisonment at any time or knowingly fails to return from furlough or from work and day release or who knowingly fails to abide by the terms of home confinement is guilty of a Class 3 felony.

STATEMENT OF FACTS

Defendant was charged with violating 720 ILCS 5/31-6(a) “in that said defendant, having been convicted of the felony offense of Burglary and Unlawful Use of Debit Card, knowingly failed to report to the Whiteside County Jail as required . . . in accordance with the terms and conditions of her Temporary Recognizance Bond.” C4.¹

The case proceeded to a stipulated bench trial with the following facts. C24; R2; R10. Defendant was convicted of burglary and unlawful use of a debit card and sentenced to thirty months of probation. C24; R12. Her

¹ “C_,” “R_,” and “A_” refer to the common law record, the report of proceedings, and the appendix to this brief, respectively.

probation was revoked and she was re-sentenced to a new term of thirty months of probation. C24; R12.

Subsequently, the People filed another petition to revoke probation. The court entered an order releasing defendant on a \$50,000 temporary recognizance bond to attend substance abuse treatment. C24; R12. The order stated that “[u]pon the Defendant’s release or discharge from White Oaks Treatment . . . the Defendant must immediately return to the custody of the Whiteside County Jail, using the most direct route of travel and without delay or departure therefrom.” C24 (underline in original).

The court later modified the conditions of bond to provide that “Defendant – upon release from White Oaks New Leaf on March 5, 2014 – shall enter directly into Stutsman’s Lodge, 1607 John Deere Rd., East Moline, traveling the most direct route without delay or departure therefrom for aftercare.” C24; R13. Further, “[u]pon release or discharge from Stutsman’s Lodge, . . . the Defendant must immediately return to the custody of the Whiteside County Jail, using the most direct route of travel and without delay or departure therefrom.” C24.

Defendant left the treatment facility and did not immediately report to the Whiteside County Jail despite knowing that she was required to do so. C24; R13; *see also* C25; R13 (“Defendant further admits that she did not report directly to the Whiteside County Jail upon leaving treatment, however knew of her bond condition requiring her to do so.”).

Defendant argued that her acts did not constitute a violation of the statute. R15-18. The trial court found defendant guilty and sentenced her to thirty months of probation consecutive to her sentences for the burglary and unlawful use of a debit card. C56; R29, 54.

The appellate court reversed, reasoning that to “commit the offense of escape, a defendant must first be in custody,” and that a defendant released on “a recognizance bond is not considered to be in ‘custody.’” A3.

STANDARD OF REVIEW

The construction of a statute is a question of law that this Court reviews de novo. *Hayashi v. Ill. Dept. of Fin. & Prof'l Regulation*, 2014 IL 116023, ¶ 16.

ARGUMENT

This Court should either hold that (1) defendant violated the plain meaning of section 31-6(a), which does not contain a custody requirement for the offense of failure to report, or (2) even if the statute contains a custody requirement, defendant’s mandatory presence at a treatment center constituted custody. The cardinal rule of statutory construction requires the Court to give the statute’s language its plain and ordinary meaning. Under 720 ILCS 5/31-6(a), a defendant commits a Class 3 felony if “a person convicted of a felony . . . knowingly fails to report to a penal institution[.]” Defendant, a convicted felon, violated this plain language by knowingly failing to report to jail. There is no requirement in the relevant clause of section 31-6(a) that a defendant escape from custody. Section 31-6(a) applies

in two distinct circumstances: (1) when a person *escapes from* custody, and (2) when a person *fails to report* to a penal institution, or for periodic imprisonment, or fails to return from furlough or work and day release, or fails to abide by the terms of home confinement. These distinct circumstances (escape and failure to report) are punished differently. An escape from custody is a Class 2 felony under the first clause, while a failure to report, regardless of custody, is punished as a Class 3 felony under the second clause. But even if custody is required under section 31-6, defendant was in custody in the relevant sense, which includes constructive custody and legal limitations on liberty.

I. Defendant Violated the Plain Language of the Statute.

The “fundamental rule of statutory construction is to ascertain and effectuate the legislature’s intent.” *Hayashi*, 2014 IL 116023, ¶ 16. “The most reliable indicator of the legislative intent is the language of the statute itself, which must be given its plain and ordinary meaning.” *Id.* “Where the language is clear and unambiguous, a court may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express.” *Id.*

Under 720 ILCS 5/31-6(a), “a person convicted of a felony . . . who knowingly fails to report to a penal institution . . . is guilty of a Class 3 felony.” There is no dispute that defendant was convicted of a felony, that she was required to report to the Whiteside County Jail — a penal institution — or that she knowingly failed to do so. C24-25; R13. Thus, defendant

violated the plain and unambiguous language of the statute, and that should be the end of the inquiry.

The appellate court erred in assuming that a defendant does not violate the statute unless she escapes from custody. Section 31-6(a) is divided into two independent clauses separated by a semicolon. One governs persons who escape from custody; the other governs persons who are not currently in physical custody but are under an order to report for custody. The first part of subsection (a), before the semicolon, addresses a person who “escapes from any penal institution or from the custody of an employee of that institution.” 720 ILCS 5/31-6(a). Offenders who escape from custody commit a Class 2 felony. *Id.*

The second independent clause, which follows the semicolon, governs the distinct situation in which a person “knowingly fails to report to a penal institution or to report for periodic imprisonment at any time or knowingly fails to return from furlough or from work and day release or who knowingly fails to abide by the terms of home confinement.” 720 ILCS 5/31-6(a). One who knowingly fails to report to a penal institution commits a Class 3 felony. The word “custody” does not appear after the semicolon, and escape from physical custody thus plays no role in this independent clause. Instead, a person violates this clause when “the person is not where the law requires [her] to be.” *People v. Casas*, 2017 IL 120797, ¶ 36.

This distinction between escape and failure to report appears in subsection (b) as well, *see* 720 ILCS 5/31-6(b), and is further reflected in the statute's title: "Escape; failure to report to a penal institution or to report for periodic imprisonment." In short, the appellate court erred by reading an additional term into the statute that is not present, for escape from custody is not an element of the relevant clause of section 31-6(a).

And it would make little sense to punish, for failure to report for custody, only those already in physical custody. Those already in physical custody who fail to report would either be escapees under the first clause of section 31-6(a) or could be forced to report. Under the statute's plain language and rational construction, custody is not an element of failure to report.

II. Even if the Offense of Failure to Report Contains a Custody Requirement, Defendant Was in Custody in the Relevant Sense.

Alternatively, even if custody is a necessary element of the Class 3 failure-to-report offense, defendant was in custody when she failed to report. In concluding otherwise, the appellate court wrongly relied on cases interpreting section 5-8-7 of the Unified Code of Corrections, which governs pre-sentencing credit for time spent in "custody." These cases held that a defendant was not in "custody" to merit presentence credit when released on pretrial bail, *People ex rel. Morrison v. Sielaff*, 58 Ill. 2d 91, 92-94 (1974) (defendant not in custody for purposes of statute giving credit for time spent in custody, which was predicated on confinement) (cited A3), or when

released on bail but subject to home detention, *People v. Ramos*, 138 Ill. 2d 152, 158-59 (1990) (cited A3).

The appellate court's belief that *Morrison* and *Ramos* required a narrow reading of "custody" in section 31-6 was mistaken. First, the General Assembly has subsequently amended the relevant provision to broaden the definition of custody in the presentencing credit context. See 730 ILCS 5/5-4.5-100(b) (authorizing credit for home detention and substance abuse treatment).

More fundamentally, the reasoning in *Morrison* and *Ramos* was specific to that statute's purpose: to ensure that defendants were not confined in a penal institution for periods in excess of their sentences. Accordingly, those cases distinguished confined defendants from those released on their own recognizance or on bond. *Id.* at 160. By contrast, section 31-6 aims to ensure that charged or convicted offenders report for physical custody.

Indeed, even the cases cited by the appellate court outside the presentence credit context interpret custody broadly. *People v. Campa*, 217 Ill. 2d 243 (2005) (cited A4), held that a defendant transferred from jail to a county sheriff's day reporting center was in custody for purposes of the speedy trial statute, and rejected the People's argument that the defendant was in custody only when physically confined in a prison or jail. *Id.* at 255, 260. *Campa* explained that "the legislature intended the term 'custody' to have a broad meaning and encompass lesser forms of restraint than

confinement” and to “evolve with the changing programs in our correctional institutions.” *Id.* at 254; *see also People v. Page*, 156 Ill. 2d 258, 277-78 (1993) (prosecutor’s statement during sentencing that defendant had “escaped” was correct statement of law as defendant failed to return from work release program).

As *Campa* explained, the law recognizes both “physical custody,” where “freedom is directly controlled and limited,” as well as “constructive custody,” where “freedom is controlled by legal authority but [the defendant] is not under direct physical control.” 217 Ill. 2d at 253-54 (quoting *Black’s Law Dictionary* 412, 1183 (8th ed. 2004)). The “term [custody] is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical.” *Id.* (quoting *Black’s Law Dictionary* 347 (5th ed. 1979)). In support of its holding, *Campa* cited amendments to section 31-6, including the addition of “the words ‘who knowingly fails to report to a penal institution’” in subsections (a) and (b). *Id.* at 259. “The escape statute shows that the legislature intended the crime of escape to evolve with the changing terms of detention used as part of the programs at our correctional institutions.” *Id.*

People v. Hunt, 234 Ill. 2d 49, 58-64 (2009) (cited A4), also did not address escape, but rather whether a sheriff needed a court order to release a pretrial detainee to police or a State’s Attorney for purposes of investigating an unrelated crime under 730 ILCS 125/19.5. *Hunt* noted that *Campa*

“concluded that ‘the term “custody” [had] a broad meaning and encompass[ed] lesser forms of restraint than confinement,’ including day reporting programs.” *Id.* at 61 (quoting *Campa*, 217 Ill. 2d at 253-54).

And the most relevant precedents — those addressing escape — establish that a broad meaning should be attributed to any requirement of custody for the offense of failure to report under section 31-6. In *People v. Simmons*, 88 Ill. 2d 270, 271 (1981), the defendant was on an independent day release program, shopping at a mall, and did not call in as required or show up to return to the correctional center. This Court rejected the defendant’s argument that he could not be charged under section 31-6, and could be charged only under the Unified Code of Corrections, which included a provision specific to a prisoner who fails to return from furlough or from work and day release. *Id.* at 278-79. The defendant, this Court explained, was still absent from required custody. *Id.* at 272-73; *see also* 730 ILCS 5/3-1-2(i) (“‘Escape’ means the intentional and unauthorized absence of a committed person from the custody of the Department.”). Simmons “was still legally in the custody of the Center, and had a legal duty to submit to that custody.” *Id.* at 273. “When he exceeded the lawful limits of his liberty, . . . he escaped from the Center.” *Id.* at 273-74.

Simmons also rejected an argument that the defendant’s conduct “was less dangerous than a classic escape from the penitentiary.” 88 Ill. 2d at 278. “The point of section 31-6 is simply to protect against the danger of a felon

freeing himself and roaming the world, evading his punishment, apart from how he does it.” *Id.* “For the purpose of that legislative policy, we see no distinction between what the defendant did here and escape in a more exciting way.” *Id.*; see also *People v. Marble*, 91 Ill. 2d 242, 247 (1982) (defendants on furlough or work release program who failed to return violated section 31-6).

That same logic applies here — defendant, a convicted felon, was legally required to be in a treatment facility during the duration of her recognizance bond. It is irrelevant, both under the statute’s plain language and considering its purpose, that she was not in physical custody when she failed to report to jail as required.

CONCLUSION

This Court should reverse the judgment of the appellate court.

March 29, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is twelve pages.

/s/ Eldad Z. Malamuth
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People v. Clark, 2017 IL App (3d) 140987

Appellate Court
Caption

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v.
ELIZABETH M. CLARK, Defendant-Appellant.

District & No.

Third District
Docket No. 3-14-0987

Filed
Modified upon
denial of rehearing

October 5, 2017

November 1, 2017

Decision Under
Review

Appeal from the Circuit Court of Whiteside County, No. 14-CF-201;
the Hon. Stanley B. Steines, Judge, presiding.

Judgment

Reversed.

Counsel on
Appeal

Michael J. Pelletier, Peter A. Carusona, and Pamela M. Rubeo, of
State Appellate Defender's Office, of Ottawa, for appellant.

Terry A. Costello, State's Attorney, of Morrison (Patrick Delfino,
Lawrence M. Bauer, and Richard T. Leonard, of State's Attorneys
Appellate Prosecutor's Office, of counsel), for the People.

Panel JUSTICE O'BRIEN delivered the judgment of the court, with opinion.
Presiding Justice Holdridge and Justice McDade concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Elizabeth Clark, was convicted by the trial court of escape for her failure to report to the county jail immediately after her discharge from a halfway house, as ordered as a bond condition, and sentenced to a term of 30 months' probation. She appealed her conviction. We reverse.

¶ 2 FACTS

¶ 3 Defendant, Elizabeth Clark, pleaded guilty to burglary and unlawful use of a debit card and was sentenced to a term of 30 months' probation with a drug treatment requirement. Clark violated her probation, and it was revoked. The trial court resentenced her to another term of 30 months' probation and 74 days in jail. She, again, violated the probation terms and admitted the allegations of probation violation.

¶ 4 In January 2014, the trial court released Clark on a \$50,000 temporary recognizance bond. The trial court's order included a number of conditions and provided that Clark "be released from custody" on January 10 "in the custody" of her father to attend substance abuse treatment at an inpatient facility. The order also required Clark to submit to a urine test "immediately upon returning to custody." She successfully completed treatment, and in February 2014, the trial court modified the conditions of her bond. Its order stated that upon her release from treatment, Clark "shall enter directly" into an extended residential care halfway house. Under the modified bond conditions, Clark was able to leave the halfway house for employment, medical needs, and 12-step meetings. The order further provided that Clark, upon release or discharge from the halfway house, was to "immediately return to the custody of Whiteside County Jail, using the most direct route of travel and without delay or departure therefrom."

¶ 5 On June 5, 2014, Clark left the halfway house and failed to report to the jail. That same day, the State filed an application to increase Clark's bond, and the trial court issued a warrant in the amount of \$50,000. The State filed an information on June 6, 2014, charging Clark with escape based on section 31-6(a) of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/31-6(a) (West 2014)). The information alleged that Clark, having been convicted of the felony offenses of burglary and unlawful use of a debit card, failed to report to the jail on June 6, 2014, as required under terms of her recognizance bond. On June 16, 2014, Clark turned herself into the Whiteside County jail, where the warrant was served.

¶ 6 A stipulated bench trial took place in September 2014. A statement of facts was entered into evidence consistent with the facts as stated above. The facts also included Clark's admission that she did not immediately report to the jail after leaving the halfway house, although she was aware she was required to do so. The trial court found Clark guilty of escape, stating that per the terms of her recognizance bond, she was required to return

immediately to the Whiteside County jail after discharge from the halfway house. The trial court further stated that Clark had been convicted of burglary and unlawful use of a debit card and was awaiting sentencing on those offenses. The trial court denied Clark's motion for a new trial and sentenced her to a 30-month term of probation. Clark appealed.

¶ 7

ANALYSIS

¶ 8

The issue on appeal is whether Clark was proved guilty of escape beyond a reasonable doubt. Clark argues that she violated the terms of her bond but was not guilty of the offense of escape. She asserts that the escape statute does not apply because she was not in custody when she failed to report as ordered.

¶ 9

The State is required to prove the elements of the offense beyond a reasonable doubt. *People v. Patterson*, 217 Ill. 2d 407, 447 (2005). Where considering the sufficiency of the evidence, the reviewing court will not set aside a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory such that it raises a reasonable doubt about the defendant's guilt. *Id.* (citing *People v. Evans*, 209 Ill. 2d 194, 209 (2004)). When construing a statute, the trial court must ascertain and give effect to the legislature's intent. *People v. Whitney*, 188 Ill. 2d 91, 97 (1999). Where the language is clear and unambiguous, a court gives it its plain and ordinary meaning. *Id.* In reviewing a challenge to the sufficiency of the evidence, this court considers whether, viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This court reviews issues of statutory interpretation *de novo*. *Id.* ¶ 18.

¶ 10

Section 31-6(a) of the Criminal Code provides:

“A person convicted of a felony or charged with the commission of a felony *** who intentionally escapes from any penal institution or from the custody of an employee of that institution commits a Class 2 felony; however, a person convicted of a felony *** who knowingly fails to report to a penal institution or to report for periodic imprisonment at any time or knowingly fails to return from furlough or from work and day release or who knowingly fails to abide by the terms of home confinement is guilty of a Class 3 felony.” 720 ILCS 5/31-6(a) (West 2014).

¶ 11

To commit the offense of escape, a defendant must first be in custody. *People v. Campa*, 217 Ill. 2d 243, 259 (2005). Custody is not defined in either the Criminal Code, the Code of Criminal Procedure of 1963 (725 ILCS 5/100-1 *et seq.* (West 2014)), or the Unified Code of Corrections (Corrections Code) (730 ILCS 5/1-1-1 *et seq.* (West 2014)). *Campa*, 217 Ill. 2d at 253, 260. Custody, defined in case law as incorporating both physical and constructive custody, is construed broadly and includes lesser forms of constraint than confinement. *Id.* at 253-54. A defendant released on bail or a recognizance bond is not considered to be in “custody” per the Corrections Code. *Id.* at 260 (citing *People ex rel. Morrison v. Sielaff*, 58 Ill. 2d 91, 93 (1974)). Bail is the security needed for release from custody. *Morrison*, 58 Ill. 2d at 94. Custody does not include the time a defendant is released on bail. *People v. Ramos*, 138 Ill. 2d 152, 161 (1990).

¶ 12

In *People v. Tillery*, 141 Ill. App. 3d 610 (1986), and *People v. Freeman*, 95 Ill. App. 3d 297 (1981), the courts focused on the degree of restraint placed on the defendants in deciding whether they were in custody for purposes of presentencing credit. Under that analysis, Clark enjoyed movements unrestricted by the court or jail personnel. Her bond restrictions included

only participation in substance abuse rehabilitation and a return to the jail when completed. Clark was released to the halfway house under a recognizance bond like the defendant in *Tillery*. That defendant, who was ordered to attend treatment, was under close supervision, was required to report when he walked the one mile between his job and the facility, and was allowed only a 15-minute unsupervised shopping trip each day. *Tillery*, 141 Ill. App. 3d at 613. The reviewing court considered the “light” restrictions placed on the defendant and found he was not in custody during his time in treatment and not entitled to presentence custody credit. *Id.* at 613-14; see also *Freeman*, 95 Ill. App. 3d at 300 (finding defendant in treatment program was not in custody because of the minimal restrictions put on his freedom).

¶ 13 Similarly, Clark was ordered to attend treatment and then a halfway house as conditions of her bond. The court’s initial order stated Clark was released from custody to her father for transport to treatment. After her bond was modified following her successful completion of the treatment program, the court did not require that either jail or court personnel transport her to the halfway house. The modified bond conditions allowed Clark to leave the facility for various reasons, including work, medical needs, and 12-step meetings during her time there. The order did not require her movements be monitored by court or jail employees, and they were not ordered to be involved in her return to the jail. The order stated that Clark was to “return to the custody” of the jail. These facts establish that Clark was not in custody when she failed to report to the jail as required by her bond conditions.

¶ 14 We find applicable another area of distinction between bail and custody. While on bail, Clark was under the authority of the court, in contrast to a person in custody who is under the authority of the sheriff or the Illinois Department of Corrections. In *Campa*, the court discussed custody to determine the defendant’s speedy trial claim. *Campa*, 217 Ill. 2d at 253. The *Campa* court distinguished between the sheriff’s authority and the court’s authority to release a defendant, concluding that courts have the sole authority to set and modify bail and to release prisoners. *Id.* at 264. In *People v. Hunt*, 234 Ill. 2d 49, 53 (2009), the defendant was transferred from the sheriff’s custody to the custody of law enforcement to aid in an investigation and later returned to custody of the jail. The reviewing court distinguished *Campa*, finding the defendant was not free on bail and his transfer was authorized by statute and did not require a judicial order. *Id.* at 63-64. The *Hunt* court stated, “defendants released on bail or on their own recognizance are no longer in the custody of law enforcement.” *Id.* at 63.

¶ 15 The State relies on *People v. Simmons*, 88 Ill. 2d 270 (1981), as support for its claim that Clark’s conviction for escape was proper. In *Simmons*, the defendant argued that he could not be convicted for escape because he failed to return to jail from an independent day release but did not escape. *Id.* at 271. The supreme court found that under the Criminal Code, defendant’s failure to return constituted an escape, as he remained in the legal custody of the correctional center while on day release. *Id.* at 273. *Simmons* is distinguished. As discussed above, Clark was released from custody by virtue of her bail.

¶ 16 Because the State could not establish that Clark was in custody, a requirement inherent in the offense of escape, it could not prove she was guilty of escape beyond a reasonable doubt. We find her escape conviction cannot stand.

¶ 17

CONCLUSION

¶ 18

The judgment of the circuit court of Whiteside County is reversed.

¶ 19

Reversed.

IN THE CIRCUIT COURT OF THE
FOURTEENTH JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)

vs)

Elizabeth M Clark
Defendant)

NO. 14CF201)

FILED
CIRCUIT COURT WHITESIDE COUNTY

DEC 10 2014

ORDER GRANTING
☒ PROBATION or [] CONDITIONAL DISCHARGE

Susan F. Otter
CIRCUIT CLERK

The People of the State of Illinois appearing by State's Attorney Trish Joyce, or an assistant, the above captioned Defendant appearing personally and by his/her attorney, James Heuerman, and the Defendant having been convicted of the offense(s) of Escape

IT IS THEREFORE ORDERED that the Defendant is sentenced to ~~Probation/Conditional Discharge~~ for a term of 30 months from this date on the following conditions:

1. Defendant shall **not violate any criminal statute** of any jurisdiction.
2. Defendant shall **not possess a firearm** or other dangerous weapon.
3. Defendant shall **report to Whiteside County Court Services** within five days of this date, and thereafter **at least once each month, or at more frequent or less intervals** if so directed. Defendant is responsible for scheduling and keeping all appointments. Defendant shall **keep Court Services advised of his/her current address** and shall provide truthful information during the course of each meeting, whether in person, by phone, or in writing. If the Defendant is arrested for any traffic or criminal offense during the term of his/her probation, he shall inform Court Services of his/her arrest within 72 hours.
4. Defendant shall **not leave the State of Illinois** without the consent of the Court or, in circumstances in which the reason for the absence is of such an emergency nature that prior consent by the Court is not possible, without the prior notification and approval of the defendant's probation officer. (If the Defendant requests that his probation supervision be transferred to another jurisdiction, the defendant is subject to a \$125.00 fee to transfer probation. {5-9-1.12}) **Defendant may not reside in any State other than the State of Illinois unless Defendant has been accepted by the receiving state under the provisions of the Interstate Compact for Adult Offender Supervision (45 ILCS 170/1 et sec).**
5. Defendant shall permit the probation officer to **visit him at his/her home** or elsewhere to the extent necessary to discharge his/her duties. Defendant shall permit the search of his person and or property at the probation officer's request.
6. Pursuant to Chapter 730, Act 5, Section 5-4-3, ILCS, Defendant shall **within 45 days of this order** or from his/her release from custody, **provide specimens** of blood, saliva, or tissue, to Whiteside County Court Services **for the purpose of gathering Genetic Marker Grouping Analysis information.** Defendant shall **report** to the Whiteside County Health Department **on the date and time scheduled** by Ct. Services for said collection. The collection of the specimens shall be in accordance with the procedures outlined in Sec. 5-4-3.
7. Defendant shall **not possess or consume any illegal drugs or alcohol** and shall **refrain from having in his/her body** the presence of **any illicit drug** prohibited by the Cannabis Control Act or the Illinois Controlled Substances Act, unless prescribed by a physician.
8. Defendant shall **not enter any establishment** whose **primary purpose** is the sale of alcohol.

9. Defendant shall submit, upon the request of the probation officer, to a blood, urine, breath or other chemical test for the purpose of determining whether defendant has possessed or consumed any prohibited substances. Defendant shall pay a one time testing fee of \$50.00 for the cost of such test(s).

10. Defendant shall pay through the Whiteside County Circuit Clerk's Office the following fines, costs, fees, assessments, and restitution:

- ☒ Costs in the amount of \$ _____; (725/5/124A-5)
- ☒ Court Services Fee in the amount of \$25.00 per month x 30 months for a total amount due of \$750.00.
- ☒ Drug Court - \$10.00 (55/5/5-1101(d-5))
- ☒ Child Advocacy Center fee - \$15.00 (55/5/5-1101(f-5))
- ☒ State Police Merit Board Public Safety Fund fee - \$15.00 (705 105/27.6)
- ☒ Viol.Crm.Vic.Asst.Fund penalty (725/240/10)
 - ☒ \$100.00 (any felony)
 - ☐ \$75.00 (any misdemeanor excluding conservation offenses)
- ☐ Genetic Marker Analysis fee - \$250.00; (730/5/5-4-3(j)) (All felony & sex cases)
- ☐ Fine in the amount of \$ _____; (730/5/5-9-1)
- ☐ Laboratory Analysis fee - \$100.00; (730/5/5-9-1.4)(Each test)
- ☐ Street Value fine - \$ _____, payable as follows: 12.5% payable to the Juvenile Drug Abuse Fund, 37.5% payable to the _____, and 50% payable to the Whiteside County Corporate Fund;(730/5/5-9-1.1&1.2)
- ☐ Trauma Center Fund fine - \$100.00; (730/5/5-9-1.1(b)&5-9-1.10&5-9-1(c-5)) (SVF; UUW by Felon; AggDis or ReckDis of Firearm; DUI)
- ☐ Spinal Cord Injury fund fee - \$5.00; (730/5/5-9-1(c-7)&730/5/5-9-1.1(c))(DUI/POT/CS)
- ☐ Drug Treat Fund assessment - \$ _____; (One per case) (720/550/10.3 & 720/570/411.2)
- ☐ Drug reimbursement in the amount of \$ _____ payable to _____.
- ☐ Criminal Justice Information Projects Fund \$25.00; (730/5-9-1.1 & 730/5/5-9-1.1-5) (cannabis, controlled substance, methamphetamine)
- ☐ Prescription Pill & Drug Disposal assessment \$20.00 (730/5/5-9-1.1(f) & 730/5/5-9-1.1-5(d)) (cannabis, controlled substance, methamphetamine)
- ☐ Sexual Assault fine - \$200.00; (730/5/5-9-1.7)
- ☐ Sex Offender Registration Violation fine - \$500.00; (730/150/10)
- ☐ Sex Offense fine - \$500.00; (730/5/5-9-1.15)
- ☐ Domestic Violence fine - \$200.00; (730/5/5-9-1.5)
- ☐ Domestic Battery fine - \$10.00; (730/5/5-9-1.6)
- ☐ Protective Order Violation fine - \$200 (minimum) (730/5/5-9-1.16)
- ☐ Viol Of Order Of Protection fine - \$20.00;(730/5/5-9-1.11)
- ☐ DUI Laboratory Analysis fee - \$150.00; (730/5/5-9-1.9)
- ☐ DUI Law Enforcement Fund fine - \$750.00 or \$1000 if 2nd or sub. convict; (625/5/11-501(j)) payable to _____.
- ☐ DUI Roadside Memorial Fund fee - \$50.00; (730/5/5-9-1.17)
- ☐ Criminal Defacement Fine - \$500.00 (720/5/21-1.3 Class 3&4)
- ☐ Streetgang fine - \$100.00 (730/5/5-9-1.19)
- ☐ Violation while on Parole or M.S.R. fine - \$25.00 (730/5/5-9-1.20)
- ☒ Crimestoppers contribution - \$100.00 (730/5/5-6-3(b)(13)) (felonies and D.U.I. only)
- ☐ Restitution in the amount of \$ _____; (730/5/5-5-6)
(Where more than one defendant is accountable for restitution for the same criminal conduct of a co-defendant, his obligation to pay restitution shall not be completed until the victim has been paid in full and all co-defendants have been reimbursed for payments beyond their pro rata share.)

☒ 11a. All fines, costs, restitution, assessments, and fees shall be paid in full on or before Say Any Order in 12CF231 at 1:00 p.m. or the Defendant shall appear in Court on said date and time.

☐ 11b. Pay all fines, costs, restitution, assessments, and fees at the rate of \$ _____ per month, on or before the _____ Wednesday of each month at 1:00 p.m., or reappear in Court on said date and time to explain the non-payment, the 1st payment being due on or before _____.

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[] 12. Defendant shall serve a term of _____ days in the Whiteside County Jail with credit for time served.

[] 13. The Defendant shall serve a term of periodic imprisonment in the Whiteside County jail for a term of _____ months. The Defendant shall actually be confined in the jail for a total of _____ days, beginning _____ . The Defendant shall comply with all the conditions outlined in the Order of Periodic Imprisonment and shall obey the rules and regulations of Per. Impr. as established by the Sheriff's Dept.

[X] 14. Defendant shall participate in, cooperate with, and satisfactorily complete a substance abuse ^{mental health} evaluation at a facility approved by Whiteside County Court Services within 45 days of the entry of this order or release from jail and shall provide written proof thereof to his/her probation officer. Defendant shall thereafter participate in, cooperate with, and satisfactorily complete any and all recommended treatment as recommended by the treatment provider, including in-patient treatment if deemed necessary and any and all recommended aftercare, attending each and every scheduled appointment. Said treatment to be successfully completed within nine (9) months of the completion of the evaluation at which time the defendant shall submit a letter from the treatment provider indicating that the defendant has completed his/her treatment. The defendant shall sign Releases of Information, as required and requested, so that the agency providing services to the defendant may disclose information as to his/her evaluation or treatment, either orally or in writing, to the Court, Whiteside County Court Services, or the State's Attorney's Office.

[] 15. Defendant shall attend at least _____ AA/NA meetings per week, and provide written proof thereof to Court Services on a monthly basis.

[] 16. Defendant shall perform _____ hours of public service employment as scheduled by Whiteside County Court Services, to be completed by _____. Defendant shall obey the rules and regulations of public service employment as outlined by Whiteside County Court Services. Defendant shall schedule and keep an appointment with Whiteside County Court Services on or before _____ for purposes of setting up public service employment.

[] 17. Defendant shall maintain full time employment of no less than _____ hours per week and provide written proof of same to his/ her probation officer on a monthly basis, if unemployed he/ she shall apply for a minimum of _____ jobs per month and provide written proof of so doing to his/ her probation officer monthly.

[X] Defendant shall report to the Whiteside County Probation Office in Morrison within 24 business hours of her release from the Jail Dept. glen.

[X] Defendant shall be tested weekly to determine whether she has possessed or consumed illegal drugs or alcohol for the first (6) six months of this term of probation.

IT IS FURTHER ORDERED that the Clerk of the Circuit Court shall deliver a copy of this order to the defendant and so note that delivery on the record.


JUDGE

DATED: 12-10-14

VIOLATION OF THIS PROBATION CAN RESULT IN RESENTENCING IN THIS CASE.

1 meaning do you -- am I to read that entire case?

2 MR. HEUERMAN: If -- of course, the
3 Court can read the entire case if you want to, but I think
4 that the only -- the relevant portion of the case starts, at
5 least as I read it, probably starts on Page 11 and it goes on
6 to discuss the escape statute and what it means to be in
7 custody and assorted reasoning. I -- I kind of paraphrased
8 and summarized what I -- what I get out of that beginning of
9 Headnote 16. I don't know that -- the most you get out of
10 reading the rest of it is maybe a little more detail in terms
11 of the argument I make and how they define custody, but it --
12 the points I wanted to make are really contained within that
13 first paragraph.

14 THE COURT: I'm going to step down
15 momentarily to do two things; to look at the IPI and to
16 organize my thoughts.

17 I will be back momentarily with my ruling. Let's shoot
18 for 4 o'clock everybody.

19 (A recess was taken.)

20 THE COURT: I have taken a few moments
21 to review IPI 22.25 which is the definition of escape as
22 referred to by Ms. Kelly. I have also taken an opportunity
23 to review Subsection A of 5/31-6 for the offense of escape.
24 I have also considered the case presented by Mr. Heuerman.

1 It is uncontested that Ms. Clark failed to report
2 pursuant to a temporary recognizance bond.

3 The question then before the Court is whether that
4 failure to report is just a violation of probation -- excuse
5 me -- just a violation of bond, or is it sufficient to
6 support a finding of guilt with respect to the offense of
7 escape.

8 Ms. Clark has been convicted of the offense of burglary
9 and unlawful use of debit card in 12 CF 231. She was
10 sentenced to probation and found in violation of her
11 probation and was awaiting sentencing on that violation of
12 probation.

13 While awaiting sentencing, she was released on a
14 temporary recognizance bond for purposes of treatment whether
15 it be at White Oaks or Stutsman Lodge, depending on which
16 most recently though at Stutsman Lodge.

17 The terms and conditions of that temporary recognizance
18 bond is that upon defendant's release or discharge from
19 Stutsman Lodge for whatever reason including but not limited
20 to withdrawal, discharge, or successful completion of
21 treatment, the Defendant must immediately return to custody
22 of Whiteside County Jail using the most direct route of
23 travel and without delay or departure therefrom. That is
24 from reading from Paragraph 4 of the Joint Exhibit B.

1 Mr. Heuerman in his argument indicates that well if you
2 are not in custody then you can't escape. Well by terms of
3 the temporary recognizance bond, once she was released from
4 Stutsman Lodge for whatever reason, she was then by
5 interpretation and reading of the temporary recog bond was
6 then to be in the custody of the Whiteside County Jail. She
7 failed to report, failed to return. Actually it is knowingly
8 fails to report to the Whiteside County Jail.

9 Having said that and given the strict reading of
10 Subsection A, she has been convicted of the burglary and
11 unlawful use of a debit card. I realize she wasn't serving a
12 sentence at that time but was awaiting sentencing. So there
13 is the conviction. There is also the failure to return to
14 custody basically to the penal institution.

15 I do find that the State has met its burden. I do find
16 Elizabeth M. Clark guilty of the offense of escape.

17 I need to set it for sentencing hearing.

18 MR. HEUERMAN: Would the Court be
19 inclined because obviously the Court is well aware of why we
20 are proceeding the way we have, I have a signed motion for
21 new trial that I would submit.

22 Would the Court be inclined to simply proceed on that
23 given that you know exactly what the arguments are, and the
24 reason I ask for that is just so we can expedite the process

1 of appeal?

2 THE COURT: Ms. Kelly, any objection to
3 moving along with the Defendant's motion for a new trial?

4 MS. KELLY: No.

5 THE COURT: I will show that Mr.
6 Heuerman has filed a motion for new trial.

7 Mr. Heuerman, arguments on that motion?

8 MR. HEUERMAN: Your Honor, since the
9 arguments were just heard by this court less than probably
10 half an hour ago, I would simply ask that you reconsider the
11 arguments made and grant a new trial or enter a finding of
12 not guilty.

13 THE COURT: Any arguments, Ms. Kelly?

14 MS. KELLY: Your Honor, the State would
15 rely on its arguments the Court just heard moments ago in the
16 bench trial.

17 THE COURT: I am going -- any further
18 argument, Mr. Heuerman?

19 MR. HEUERMAN: No, sir.

20 THE COURT: I am going to stand by my
21 ruling.

22 I do find that by operation of the temporary
23 recognizance bond it is temporary in nature. Once the
24 conditions were met with regard to her release from Stutsman

1 Lodge, then by operation of that temporary recog she was to
2 be in the custody of the Whiteside County Jail. She failed
3 to return, failed to report back to the Whiteside County
4 Jail. I do find that that supports a finding of escape. I
5 do stand by my ruling. She is found guilty or I maintain my
6 finding of guilt. The motion for a new trial is denied.

7 Anything further other than setting it for sentencing
8 hearing, Mr. Heuerman?

9 MR. HEUERMAN: No, there is not.

10 I would ask because we did just have a presentence
11 report not too awful long ago as well as an addendum that was
12 attached to that report, I think Ms. Clark has been in the
13 custody of the Department of Corrections at all times since.
14 Ms. Henry is here, if a presentence report for this matter to
15 be -- I am not sure how long she needs. I'm hoping for a
16 very, very quick sentencing date.

17 THE COURT: Ms. Kelly, we're going to go
18 off the record momentarily.

19 If you would -- you and Mr. Heuerman would both speak
20 with Ms. Henry with regards to that issue and give me some
21 guidance on that.

22 (Discussion held off
23 the record.)

24 THE COURT: Mr. Heuerman and Ms. Kelly

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)

vs.)

NO. 14CF201

ELIZABETH M. CLARK,)

Defendant.)

NOTICE OF APPEAL

FILED
CIRCUIT COURT WHITESIDE COUNTY
DATE 12-15-14
CLERK
Susan F. Allen

An appeal is taken from the judgment described below:

1. Court to which appeal is taken:
Appellate Court of Illinois, Third Appellate District
2. Name and address of appellant:
ELIZABETH M. CLARK
Illinois Department of Corrections
3. Name and address of attorney for appellant:
Appellant is indigent, has no attorney and requests the appointment of an attorney.
4. Date of judgment or order being appealed:
September 23, 2014 - Finding of Guilty; and
September 23, 2014 - Denial of Motion for New Trial
5. Offense of which convicted or nature of order:
Finding of Guilty for offense(s) of Escape
Denial of Motion for New Trial
6. Sentence:
Escape - 30 months Probation

ELIZABETH M. CLARK, Defendant

By: 

James F. Heuerman
Public Defender

Dated: December 15, 2014

James F. Heuerman
Public Defender
Whiteside County Courthouse
Morrison, IL 61270
(815) 772-5191

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STATE OF ILLINOIS)
)
 COUNTY OF COOK) ss.

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On March 29, 2018, the foregoing **Brief and Appendix of Plaintiff-Appellant** was (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief and Appendix to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

E-FILED
 3/29/2018 11:39 AM
 Carolyn Taft Grosboll
 SUPREME COURT CLERK

/s/ Eldad Z. Malamuth
 ELDAD Z. MALAMUTH
 Assistant Attorney General