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required. In this case, the juvenile court did not make such specific findings; the Court of Appeals did those calculations for the juvenile court. The holding in *Williams* may have escaped the notice of a juvenile court judge because *Williams* is an adult criminal case. Thus, here, we explicitly extend this requirement to the juvenile court. A juvenile court judge must make specific findings on the record regarding any excludable time periods as defined in § 29-1207 before making the ultimate determination as to whether discharge would be in the best interests of a child.

VI. CONCLUSION

For the foregoing reasons, we affirm the decision of the Court of Appeals.

AFFIRMED.

MILLER-LERMAN, J., participating on briefs.

STATE OF NEBRASKA, APPELLEE, V.
REBECCA M. BREE, APPELLANT.
827 N.W.2d 497

Filed March 15, 2013. Nos. S-12-684 through S-12-686.

1. **Sentences: Appeal and Error.** Whether a defendant is entitled to credit for time served is a question of law. An appellate court reviews questions of law independently of the lower court.

Appeals from the District Court for Platte County, ROBERT R. STEINKE, Judge, on appeal thereto from the County Court for Platte County, FRANK J. SKORUPA, Judge. Sentences vacated, and causes remanded for resentencing.

Nathan J. Sohriakoff, Deputy Platte County Public Defender, for appellant.

Jon Bruning, Attorney General, George R. Love, and Siobhan E. Duffy, Senior Certified Law Student, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and CASSEL, JJ.

PER CURIAM.

NATURE OF CASE

In these three consolidated appeals, Rebecca M. Bree challenges the district court for Platte County's affirmances of orders of the county court for Platte County in which the county court rejected her requests to have credit for time served applied against her sentences. Because the county court erred when it rejected Bree's requests to grant credit, the district court erred when it affirmed these rulings. We vacate the sentences and remand the three causes for resentencing.

STATEMENT OF FACTS

On October 5, 2011, Bree appeared in county court and pled guilty to four misdemeanors in three separate cases. In case No. S-12-684, she pled guilty to one count of issuing bad checks (less than $200), a Class II misdemeanor under Neb. Rev. Stat. § 28-611(1)(d) (Cum. Supp. 2012). In case No. S-12-685, she pled guilty to one count of driving prior to reinstatement of license, a Class III misdemeanor under Neb. Rev. Stat. § 60-4,108(2) (Reissue 2010). In case No. S-12-686, she pled guilty to one count of issuing bad checks (less than $200), a Class II misdemeanor under Neb. Rev. Stat. § 28-611(1)(d) and one count of issuing no-account checks (less than $200), a Class II misdemeanor under Neb. Rev. Stat. § 28-611.01(1)(d) (Cum. Supp. 2012). Bree was ordered to appear for sentencing in each case on November 18.

Bree failed to appear for sentencing on November 18, 2011, and the court issued a bench warrant for her arrest in each of the three cases. The bench warrant in each case stated that a "complaint has been filed" charging Bree variously with the respective offenses recited above and identified those offenses by statute number. None of the statutes cited are for the crime of failure to appear. The bench warrants noted that Bree had failed to appear on November 18 and ordered that she was to be arrested and brought before the court "to answer such complaint and be further dealt with according to law." No complaint was filed charging Bree with the offense of failure to appear, and hence Bree was not convicted for failure to appear.

The record shows that Bree was arrested in Dodge County, Nebraska, on January 3, 2012, and was transported to the Platte County detention facility on January 6. On January 11, she was released after signing a $2,500 appearance bond. On April 4, she was sentenced as follows: in case No. S-12-684, 10 days in the Platte County jail; in case No. S-12-685, a fine of $150 with an order that she be committed to the Platte County jail until the fine was paid; and in case No. S-12-686, 10 days in the Platte County jail for each of the two counts. The 10-day jail sentences for the two convictions in case No. S-12-686 were ordered to be served concurrently with one another and consecutively to the 10-day jail sentence in case No. S-12-684. Bree did not receive any credit for time served.

Bree brought the failure to give credit for time previously served to the county court's attention. She sought credit for the 9 days she was in jail from January 3 through 11, 2012. The county court rejected Bree's assertion that she was entitled to time served and cited to *State v. Heckman*, 239 Neb. 25, 473 N.W.2d 416 (1991).

Bree appealed to the district court and claimed that the county court erred when it failed to give her credit for time previously served. The district court rejected Bree's assertion, also citing to *Heckman*.

Bree appeals. Cases Nos. S-12-684 through S-12-686 have been consolidated for briefing and disposition.

ASSIGNMENT OF ERROR

Bree claims that the district court erred when it affirmed the county court's rulings in which the county court rejected her requests for credit for time served.

STANDARD OF REVIEW

[1] Whether a defendant is entitled to credit for time served is a question of law. We review questions of law independently of the lower court. See *State v. Wills, ante* p. 260, 826 N.W.2d 581 (2013).

ANALYSIS

We have recently observed that "[t]he calculation and application of credit for time served is controlled by statute. Different

statutes address credit for time served based on whether the defendant is sentenced to jail or prison." *State v. Wills, ante* at 264, 826 N.W.2d at 585. See, also, Neb. Rev. Stat. §§ 47-503 (Reissue 2010) (jail sentences) and 83-1,106 (Reissue 2008) (prison sentences). The provisions are substantially the same, and the reasoning of cases involving either provision is applicable here. See *State v. Wills, supra*.

Because Bree was sentenced to jail, we look to § 47-503. Section 47-503 provides in relevant part:

> Credit against a jail term shall be given to any person sentenced to a city or county jail for time spent in jail as a result of the criminal charge for which the jail term is imposed or as a result of conduct upon which such charge is based.

Bree claims that both the county court and the district court erred when they rejected her assertion that she should have received credit against her sentences for the time she served from January 3 through 11, 2012. We agree with Bree.

In reaching their determinations, the lower courts both relied on *State v. Heckman, supra*. Indeed, the county court stated that "[t]he situation presented here is identical to the situation in *State v. Heckman* . . . ." We find that the lower courts' reading of *Heckman* was erroneous.

State v. Heckman, supra, involved § 83-1,106. Properly read, the reasoning in *Heckman* applies to these cases. In *Heckman*, the defendant served two separate periods in jail prior to sentencing. The first period resulted from the initial criminal charges of possession of a firearm by a felon, possession of a concealed weapon, and second-offense driving while intoxicated. The defendant was later convicted and sentenced for these charges. The second period was based on a charge and arrest for the crime of failure to appear when ordered. See Neb. Rev. Stat. § 29-908 (Reissue 2008). Although charged and arrested, there was no conviction or sentence on the failure to appear charge. We concluded that the time served solely on the failure to appear charge could not be credited against the first period of detention which was attributable to the original offenses of which the defendant was convicted and sentenced.

The facts in the present cases are distinguishable from *Heckman*. The bench warrants in the present cases each recited that a "complaint has been filed" against Bree, and the offenses were listed in the bench warrants with particularity by statute number, offense description, class of offense, and date of offense. Although the narrative in each bench warrant states that Bree did not comply with an order to appear on November 18, 2011, the sheriff was ordered "to immediately arrest" Bree "to bring . . . her before this court . . . to answer such complaint." Bree's arrest on January 3, 2012, was for the four crimes contained in the complaints. She was not arrested for failure to appear. Whether or not Bree could have been charged with failure to appear, she was not so charged. See § 29-908.

In rejecting her argument regarding credit for time served, the district court stated in each of the three orders that Bree was "arrested and taken into custody . . . not as a result of the offense for which she was actually sentenced in this case." This is not factually correct.

Bree was convicted of four crimes and received four jail terms. Section 47-503 provides for credit to be given against a sentence to jail "for time spent in jail as a result of the criminal charge for which the jail term is imposed or as a result of conduct upon which such charge is based." The bench warrants in these cases show that Bree was arrested and jailed from January 3 through 11, 2012, as a result of the four criminal charges and convictions for which jail terms were ultimately imposed. This period of time Bree "spent in jail" was a "result of the criminal charge[s] for which the jail term[s]" at sentencing were imposed. See § 47-503. Under § 47-503, she is entitled to credit for time served from January 3 through 11, 2012, against the sentences imposed.

We have recently stated that "[n]o part of crediting time served requires a court to exercise discretion . . . ." *State v. Wills, ante* p. 260, 263, 826 N.W.2d 581, 585 (2013). Whether a defendant is entitled to credit for time served is a question of law. *Id*. Indeed we have even noted plain error where the sentencing court failed to calculate credit for time served to

which a defendant was entitled. *State v. Groff*, 247 Neb. 586, 529 N.W.2d 50 (1995).

Credit for time served is not discretionary, but instead, based on the record, an absolute and objective number. See *State v. Clark*, 278 Neb. 557, 772 N.W.2d 559 (2009). The file before the county court showed that Bree had been arrested on January 3, 2012, and released on January 11, pursuant to bench warrants related to the three underlying informations. In the absence of a presentence report which would readily reflect time served, it is especially important that time served be ascertained from a reading of the file so that credit can be given at sentencing. The district court erred as a matter of law when it affirmed the county court's rejection of Bree's requests for credit for time served.

CONCLUSION

Bree was arrested and spent time in jail from January 3 through 11, 2012, as a result of criminal charges of which she was later convicted and sentenced to jail. Under § 47-503, Bree was entitled to credit for time served from January 3 through 11. The county court erred when it denied Bree's requests for credit for time served. The district court erred as a matter of law when it affirmed these orders. We vacate the sentences imposed and remand these three causes to the district court with directions to remand them to the county court for resentencing in accordance with this opinion.

SENTENCES VACATED, AND CAUSES REMANDED FOR RESENTENCING.

MILLER-LERMAN, J., participating on briefs.