

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

CHRISTOPHER ROBERT EVANS, *Appellant*.

No. 1 CA-CR 15-0329
FILED 10-4-2016

Appeal from the Superior Court in Yuma County
No. S1400CR201400224
No. S1400CR201400589
The Honorable Lawrence C. Kenworthy, Judge

AFFIRMED AS CORRECTED

COUNSEL

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By Diane L. Hunt
Counsel for Appellee

Yuma County Public Defender's Office, Yuma
By Edward F. McGee
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Patricia K. Norris delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Margaret H. Downie joined.

NORRIS, Judge:

¶1 Christopher Robert Evans appeals from his convictions and sentences in Yuma County cause number S1400CR201400224 (“Parent Case”) for aggravated harassment, a class 6 felony (“Parent Count 1”); aggravated harassment, a class 5 felony (“Parent Count 2”); and criminal damage, a class 6 felony (“Parent Count 4”); and in Yuma County cause number S1400CR201400589 (“Child Case”) for two counts of forgery, both class 4 felonies (“Child Count 1” and “Child Count 2,” respectively), and one count of aggravated harassment, a class 6 felony (“Child Count 3”). Although Evans has appealed all of his convictions and sentences in the Parent and Child Cases, he only argues that the superior court should have awarded him eight days of presentence incarceration credit on Parent Count 4. As a matter of law, however, Evans is not entitled to eight days of presentence incarceration credit on Parent Count 4. Thus, we affirm his convictions and sentences as corrected below.

¶2 In February 2014, a grand jury indicted Evans in the Parent Case, and Evans was in custody from February 20 until he was released on February 27 (eight days). On May 12, 2014, police arrested Evans in the Child Case and he remained in custody until sentencing on April 23, 2015 (346 days). After consolidating the Cases, the superior court held a consolidated April 23, 2015 sentencing hearing. At sentencing, the superior court imposed what it characterized as presumptive sentences on all counts, *see* note 2 *infra*, did not award any presentence incarceration credit in the Parent Case, but awarded 354 days of presentence incarceration credit in the Child Case but only on Child Count 2.

¶3 After the “prison indicated they were having problems with the way [the sentencing minute entry] was . . . written,” the superior court held a hearing on July 16, 2015, to correct and clarify the sentences in both Cases. At this July 16, 2015 hearing, the superior court modified its prior order consolidating the Cases to reflect it had only consolidated the Cases

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for trial, not for sentencing.¹ The superior court again imposed what it characterized as presumptive sentences on all counts, *see* note 2 *infra*, and allocated all 354 days of presentence incarceration credit to the Child Case but only on Child Count 1. The superior court imposed concurrent sentences on Parent Counts 1 and 2 and Child Counts 1, 2, and 3, but specified that the sentence on Parent Count 4 was to be consecutive to all of the concurrent sentences.

¶4 We agree with Evans that the superior court should not have allocated the eight days of presentence incarceration credit from February 2014 to the Child Case. *See* A.R.S. § 13-712(B) (2014); *State v. Chavez*, 172 Ariz. 102, 103, 834 P.2d 825, 826 (App. 1992). Nevertheless, Evans is not entitled to have the eight days of presentence incarceration credit allocated to Parent Count 4. As discussed above, the superior court ordered the sentence on Parent Count 4 to be consecutive to the concurrent sentences it imposed on Parent Counts 1 and 2 and on Child Counts 1, 2, and 3. Accordingly, Evans was not entitled to presentence incarceration credit on Parent Count 4 as the sentence on that count was a consecutive sentence. *See State v. McClure*, 189 Ariz. 55, 57, 938 P.2d 104, 106 (App. 1997).

¶5 Although not mentioned in the briefing on appeal, the sentencing minute entries in the Parent Case and the Child Case contain several ambiguities. *State v. Fernandez*, 216 Ariz. 545, 554, ¶ 32, 169 P.3d 641, 650 (App. 2007) (appellate court will not ignore sentencing errors if discovered in the record). For example, first, although the record reflects the superior court intended to sentence Evans to a total of five and one-half years' imprisonment, the superior court's July 16, 2015 sentencing minute entries in the two Cases do not reflect that total sentence of imprisonment. Second, although at the sentencing hearing the superior court pronounced the correct presumptive term for the sentence on Parent Count 2 (one and one-half years), the resulting minute entry identifies a different presumptive sentence for Parent Count 2. Third, neither at the sentencing hearing nor in its sentencing minute entry in the Child Case did the superior court actually specify the presumptive term of each sentence on Child Counts 1, 2, and 3. The record, however, reflects the court intended to

¹The record reflects that at both sentencing hearings, the superior court sentenced Evans as a category one repetitive offender pursuant to Arizona Revised Statutes ("A.R.S.") section 13-703(H) (2014).

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impose the following presumptive sentences on each count,² to run concurrently: two and one-half years on Child Count 1; four and one-half years on Child Count 2; and three years on Child Count 3. Finally, as noted earlier, the superior court also awarded presentence incarceration credit on only one of the three concurrent counts in the Child Case. When presentence incarceration credit is awarded on concurrent counts, the credit should apply to each sentence of the case. *State v. Cruz-Mata*, 138 Ariz. 370, 375-76, 674 P.2d 1368, 1373-74 (1983).

¶6 Therefore, we correct the July 16, 2015 sentencing minute entry in the Parent Case to reflect the following sentences:

- **On Parent Count 1**, aggravated harassment, a class 6 felony, the presumptive sentence of one year to run concurrently with the sentences imposed on Parent Count 2 and Child Counts 1, 2, and 3;
- **On Parent Count 2**, aggravated harassment, a class 5 felony, the presumptive sentence of one and one-half years to run concurrently with the sentence imposed on Parent Count 1 and Child Counts 1, 2, and 3; and
- **On Parent Count 4**, criminal damage, a class 6 felony, the presumptive sentence of one year to run consecutive to the sentences imposed on Parent Counts 1 and 2 and Child Counts 1, 2, and 3.

¶7 We also correct the July 16, 2015 sentencing minute entry in the Child Case to show that the superior court imposed the following sentences:

²The jury found Evans was on release status when he committed the forgery offense in Child Count 2 and the aggravated harassment offense in Child Count 3. Accordingly, at the April 2015 sentencing hearing and at the July 2015 sentencing hearing the court imposed the presumptive sentence for each of these offenses under A.R.S. § 13-703(H) and then increased the presumptive sentence for each one of these two offenses by two additional years pursuant to A.R.S. § 13-708(D) (2014). Despite increasing the sentences on these two offenses by two years, the superior court referred to all of the sentences it imposed on all counts in both Cases as “presumptive sentences.” We have used the superior court’s sentencing terminology in this decision.

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- **On Child Count 1**, forgery, a class 4 felony, the presumptive sentence of two and one-half years to run concurrently with the sentences imposed on Child Counts 2 and 3, with 354 days of presentence incarceration credit;³
- **On Child Count 2**, forgery, a class 4 felony, the presumptive sentence of four and one-half years, *see* note 2 *supra*, to run concurrently with the sentences imposed on Child Counts 1 and 3, with 354 days of presentence incarceration credit; and
- **On Child Count 3**, aggravated harassment, a class 6 felony, the presumptive sentence of three years, *see* note 2 *supra*, to run concurrently with the sentences imposed on Child Counts 1 and 2, with 354 days of presentence incarceration credit.

¶8 For the foregoing reasons, we affirm Evans' convictions and sentences in the Parent and Child Cases as corrected.



AMY M. WOOD • Clerk of the Court
FILED: AA

³Although the superior court should not have allocated the eight days of presentence incarceration credit to the Child Case, the State did not cross-appeal. Thus, we do not have jurisdiction to reduce the presentence incarceration credit awarded by the superior court in the Child Case by eight days. *State v. Dawson*, 164 Ariz. 278, 282, 792 P.2d 741, 745 (1990).