

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 23, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP253-CR

Cir. Ct. No. 1997CF275B

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY DEWAYNE TAYLOR,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Rock County:
DANIEL T. DILLON, Judge. *Affirmed.*

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Anthony Taylor appeals an order of the circuit court denying his motion for additional sentence credit. For the reasons set forth below, we affirm the order of the circuit court.

BACKGROUND

¶2 This case has a long and detailed background, but the relevant facts are as follows. This appeal concerns Rock County Circuit Court case number 1997CF275B, in which Taylor was convicted of felony bail jumping in July 1997. Taylor was given a sentence of five years, withheld, with probation ordered. The judgment of conviction specified that the sentence was to be consecutive to the sentence in Rock County Circuit Court case number 1997CF274B, in which Taylor received a sentence of five years of imprisonment with 167 days of sentence credit. Taylor's sentence in case number 1997CF274B was fully discharged as of May 3, 2008. On February 20, 2013, Taylor's probation was revoked in 1997CF275B and he was sentenced to five years in state prison with 442 days of sentence credit.

¶3 On May 12, 2012, Taylor filed a motion requesting additional sentence credit. Through multiple supporting briefs and other submissions to the circuit court, Taylor argued that he was entitled to sentence credit for various time periods served in Columbia County, Dane County, and Rock County. In an order dated September 5, 2013, the circuit court concluded, in relevant part, that Taylor was entitled to 442 days of sentence credit related to his probation revocation in 1997CF275B, as ordered at his revocation hearing. The circuit court further stated in its order that if Taylor believed he was entitled to any additional sentence credit, he must provide supporting documentation to the court in the form of a Revocation Order and Warrant "or some other form of credible proof."

¶4 Taylor then filed documentation that he argued supported his claim for additional sentence credit on top of what the court had acknowledged in its September 5, 2013 order. The Department of Corrections (DOC) also submitted a

report clarifying Taylor’s sentence structure. After a hearing held January 7, 2014, the circuit court concluded that Taylor was not entitled to any further credit. The court entered a written order on April 9, 2014, reaffirming that Taylor was entitled to 442 days of sentence credit in 1997CF275B and denying his requests for additional credit. Taylor appealed. Due to the fact that Taylor’s notice of appeal was untimely to appeal the circuit court’s September 5, 2013 order, we issued an order on April 30, 2014, limiting the scope of our review to new issues raised by Taylor in the additional documentation he submitted to the circuit court that resulted in the April 9, 2014 order.

STANDARD OF REVIEW

¶5 Review of sentence credit determinations under WIS. STAT. § 973.155 (2013-14)¹ requires us to engage in statutory interpretation, which presents a question of law that we review de novo. *State v. Floyd*, 2000 WI 14, ¶11, 232 Wis. 2d 767, 606 N.W.2d 155.

DISCUSSION

¶6 WISCONSIN STAT. § 973.155(1) states in relevant part:

(1)(a) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, “actual days spent in custody” includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

1. While the offender is awaiting trial;
2. While the offender is being tried; and
3. While the offender is awaiting imposition of sentence after trial.

(b) The categories in par. (a) and sub. (1m) include custody of the convicted offender which is in whole or in part the result of a probation, extended supervision or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10 (2) placed upon the person for the same course of conduct as that resulting in the new conviction.

¶7 On appeal, Taylor argues that he is entitled to 167 days of credit, to be applied to his sentence in Rock County Circuit Court case number 1997CF275B. He asserts that the circuit court misconstrued *State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988), in concluding that Taylor was not entitled to 167 days of credit in 1997CF275B because he had already received this presentence credit in his five year sentence in 1997CF274B, which was imposed consecutively with his sentence in 1997CF275B.

¶8 We conclude, as did the circuit court, that Taylor’s argument fails under *Boettcher*, 144 Wis. 2d at 100. In *Boettcher*, the Wisconsin Supreme Court held that custody credits should be applied in a mathematically linear fashion where consecutive sentences are imposed. The court noted the absence of any language in WIS. STAT. § 973.955(1) “even suggesting the possibility of dual credits” on consecutive sentences. *Boettcher*, 144 Wis. 2d 100. The court therefore concluded that “The total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences. For ease in calculation and clarity in respect to subsequent exercise of court discretion, the credits should be applied to the sentence that is first imposed.” *Id.*

¶9 That is what happened with Taylor’s consecutive sentences in 1997CF274B and 1997CF275B. Taylor’s credit for 167 days of presentence time was applied to his sentence in 1997CF274B. Under *Boettcher*, 144 Wis. 2d at 100, he is not entitled to “dual credit” and, thus, is not entitled to an additional 167 days of credit in 1997CF275B, the other part of his consecutive sentence.

¶10 Taylor also argues on appeal, as he did in the circuit court, that he is entitled to additional credit for time served in Dane, Columbia, and Rock counties while on supervision holds. By our order dated April 30, 2014, we limited the scope of our review to new issues raised by Taylor in the additional documentation he submitted to the circuit court following the entry of the circuit court’s September 5, 2013 order. Taylor asserts in his appellate brief that the information he submitted regarding his time served while on supervision holds had never been brought to the court’s attention before.

¶11 However, the record contradicts Taylor’s assertion. His “Amended Supplemental Brief For Sentence Credit,” filed on June 11, 2013, included documentation on each of the Columbia and Dane cases and corresponding custody periods that Taylor now argues the circuit court never considered. Likewise, the record reflects that, with his “Amended and Corrected Brief in Support of the Defendant’s Sentence Credit,” dated November 24, 2012, Taylor submitted documentation regarding the time periods he served while on supervision holds in Rock County. Thus, the issues of sentence credit for supervision holds are not new issues raised after the circuit court’s entry of its September 5, 2013 order, nor do they pertain specifically to the April 9, 2014 order on appeal. Accordingly, Taylors’ arguments regarding additional sentence credit for supervision holds in Dane, Columbia, and Rock Counties are outside the scope of our review. Taylor has failed to point to any new documentation in the

record to support his claims for additional sentence credit and, thus, we affirm the circuit court's April 9, 2014 order.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

