

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

No. 98-2313-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CORIE S. BERGERON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

MYSE, P.J. Corie S. Bergeron appeals a judgment of conviction for battery and an order denying his postconviction motion for sentence credit. Bergeron contends the trial court erred by refusing to apply a thirty-one-day sentence credit against a battery sentence for the time he was in custody in North Carolina on a Department of Intensive Sanctions (DIS) and probation hold.

Bergeron first claims he is entitled to the credit because presentence credit had already been applied to one of his three concurrent sentences, and credit must therefore be applied to all concurrent sentences, including the battery sentence. He also claims he is entitled to the credit because the thirty-one-day confinement on a probation hold was imposed either as a result of the commission of the battery or pursuant to the battery complaint and warrant, thereby satisfying the requirements for credit pursuant to § 973.155(1)(a) and (b), STATS. Because we conclude that concurrent sentencing alone is insufficient to require that credit be given on all concurrent sentences and that Bergeron has waived his claim that the confinement was related to the battery charge, we affirm the judgment of conviction and postconviction order denying the credit.

Corie Bergeron was convicted of intermediate aggravated battery in violation of § 940.19(3), STATS., with an included repeat offender status under § 939.62, STATS. He was sentenced to eight years in prison, concurrent with any sentence currently being served.

The underlying event precipitating the battery conviction occurred on April 16, 1997. A criminal complaint and warrant were filed on April 18, 1997. Bergeron fled and was apprehended in North Carolina on May 21, 1997. At the time of his apprehension, Bergeron was under concurrent probation and DIS supervision on two other convictions.¹ Both DIS and Probation and Parole imposed a hold on him. On June 21, 1997, DIS returned Bergeron to prison in

¹ In 1995, Bergeron was convicted of fleeing an officer. He was first placed on probation, which was revoked, and then sentenced to DIS for two years. In 1996, Bergeron was convicted of possession with intent to deliver. He was sentenced to three years prison, imposed and stayed, and placed on three years probation concurrent with his DIS sentence on the fleeing conviction.

Wisconsin at Jackson Correctional Institution. Although placement at the prison was not pursuant to a DIS sanction, Bergeron was still under DIS control. On August 26, 1997, Bergeron's probation on the possession conviction was revoked, and the three-year prison sentence was imposed. At that time, Bergeron was given credit on the possession sentence for the period of confinement in North Carolina. After his sentencing on the battery conviction, Bergeron filed a postconviction motion seeking credit on the battery sentence for the thirty-one days he was confined in North Carolina. The trial court denied the postconviction motion, and Bergeron now appeals.

Whether Bergeron is entitled to credit on the battery sentence for his thirty-one days of confinement in North Carolina requires application of § 973.155(1)(a) and (b), STATS.,² to undisputed facts.³ *State v. Collett*, 207 Wis.2d

² Section 973.155(1)(a), STATS., provides:

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. 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.

Section 973.155(1)(b) addresses custody resulting from a probation hold and provides:

The categories in par. (a) 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. 304.06(3) or 973.10(2) placed upon the person for the same course of conduct as that resulting in the new conviction.

³ The parties raise no factual disputes over the dates Bergeron was in custody.

319, 321, 558 N.W.2d 642, 643 (Ct. App. 1996). This involves a question of law which this court reviews de novo. *Id.*

Bergeron first contends that credit should be given because the sentences for all three of his convictions were concurrent. Bergeron asserts that because presentence credit has already been applied against the possession sentence, it must be given on all concurrent sentences, including the battery sentence. We have stated that “dual credit--where an offender can receive credit for a single episode of jail time toward two (or more) sentences--will be granted only for sentences which are concurrent.” *State v. Rohl*, 160 Wis.2d 325, 330, 466 N.W.2d 208, 210 (Ct. App. 1991) (emphasis omitted). The mere imposition of concurrent sentences, without more, is insufficient to warrant the application of sentence credit. We have further stated, sentence credit which is due on one sentence should be applied to all other concurrent sentences imposed *for the same course of conduct*. *State v. Ward*, 153 Wis.2d 743, 746, 452 N.W.2d 158, 160 (Ct. App. 1989). In addition, “[w]hen concurrent sentences are imposed at the same time or for offenses arising from the same course of conduct, sentence credit is to be determined as a total number of days and is to be credited against each sentence imposed.” WIS J I--CRIMINAL SM-34A, at 8 (emphasis added). “[T]here is no ... right to credit against confinement in criminal matters where the period of confinement has nothing to do with the matter for which sentence credit is sought.” *State v. Beets*, 124 Wis.2d 372, 379, 369 N.W.2d 382, 385 (1985). Here, none of Bergeron’s sentences was imposed at the same time, and there is no evidence demonstrating that the offenses arose from the same course of conduct.

Bergeron makes an additional claim for credit for the North Carolina incarceration although the basis for this claim is unclear. He contends that the confinement is related to the battery charge either because the battery caused the

probation hold to be issued or because the warrant issued charging battery was, at least in part, the reason for his North Carolina detention. Bergeron raises this argument on appeal for the first time in his reply brief. As a general rule, this court does not consider arguments raised for the first time in a reply brief, and we see no reason to do so here. *State v. Lewandowski*, 122 Wis.2d 759, 763, 364 N.W.2d 550, 552 (Ct. App. 1985). Accordingly, these arguments have been waived.

Because Bergeron has failed to establish that he is entitled to sentence credit on the battery sentence for his incarceration in North Carolina, we affirm the judgment of conviction and postconviction order.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

