

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 27, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-2782-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DANNY W. FILTER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Shawano County:
JAMES P. JANSEN, Judge. *Affirmed in part; reversed in part and cause
remanded for further proceedings.*

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

PER CURIAM. Danny Filter appeals a postjudgment order denying his motion seeking credit against the seven-year sentence imposed January 13, 1998 for second-degree sexual assault of a child, as a repeater. This was Filter's second sentencing for the crime, and the trial court made the sentence concurrent

to others Filter was serving. The police originally arrested and incarcerated Filter for the sexual assault on September 15, 1995, and the State revoked his parole on December 1, 1995. On March 5, 1996, after a jury trial, the trial court sentenced Filter to a ten-year prison term to be served consecutive to other sentences he was then serving. We reversed that conviction and sentence and remanded the matter for a new trial.

On retrial, a jury found Filter guilty a second time. The trial court resentenced Filter to the seven-year concurrent term he is now serving. On appeal, Filter seeks credit against his January 13, 1998, sentence for two time frames he spent incarcerated: (1) from his September 15, 1995, arrest until his December 1, 1995, parole revocation; and (2) from his original March 5, 1996, sentencing until his January 13, 1998, resentencing after the new trial. We conclude that Filter deserves credit for the former but not the latter time frame. We therefore affirm the postjudgment order in part, reverse it in part, and remand the matter for the trial court to award Filter sentence credit.

Sentence credit is a question of law, and we review the trial court's ruling de novo. *See State v. Rohl*, 160 Wis.2d 325, 329, 466 N.W.2d 208, 210 (Ct. App. 1991). Here, the State concedes that Filter deserves sentence credit for the period from September 15, 1995, through December 1, 1995, the time between his arrest and parole revocation. We accept the State's concession of error and therefore will not discuss this issue further, except to note that Filter was in dual custody during this time frame, by virtue of both the sexual assault arrest and the parole hold, and deserved credit for time served under such dual custody. *See State v. Beets*, 124 Wis.2d 372, 379-83, 369 N.W.2d 352, 385-87 (1985).

Filter has no right, however, to sentence credit for the period from March 5, 1996, through January 13, 1998, the time between his original sentencing and his resentencing after the new trial. The trial court made the original sentence consecutive to other sentences Filter was serving, and he never served any part of the original sentence before its invalidation. He was serving only the antecedent sentences during that time, and the sexual assault sentence never commenced. As a result, Filter was not then “in custody in connection with the course of conduct for which the sentence was imposed” within the meaning of § 973.155(1)(a), STATS. See *State v. Boettcher*, 144 Wis.2d 86, 90, 423 N.W.2d 533, 535 (1988). The trial court correctly denied credit for that term.

By the Court.—Order affirmed in part; reversed in part and cause remanded for proceedings consistent with this opinion. No costs to either party.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

