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DISTRICT IV

September 14, 2015

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You are hereby notified that the Court has entered the following opinion and order:

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| 2014AP2326-CR | State of Wisconsin v. Christopher Davis (L.C. # 2010CF371) |
| 2014AP2327-CR | State of Wisconsin v. Christopher Davis (L.C. # 2011CF1916) |
| 2014AP2328-CR | State of Wisconsin v. Christopher Davis (L.C. # 2011CF987) |
| 2014AP2329-CR | State of Wisconsin v. Christopher Davis (L.C. # 2011CF2144) |

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

Christopher Davis, pro so, appeals a circuit court order denying Davis's motion for sentence credit. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ Although we agree with the circuit court that Davis's main argument lacks merit, we understand

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

the State to essentially be conceding that Davis is entitled to three additional days of sentence credit. Thus, we reverse and remand with directions to award Davis three additional days of sentence credit.

On June 7, 2011, Davis was arrested and placed on a probation hold on suspicion that Davis had committed new crimes contrary to the terms of his probation. On August 22, 2011, the Department of Corrections revoked Davis's probation. On January 3, 2012, Davis was sentenced after revocation to ten months in the county jail, with 208 days of sentence credit. Davis was released from jail on January 19, 2012, after serving 226 days in custody. On September 28, 2012, Davis was sentenced in the new cases that arose from his conduct leading to revocation. In the new cases, Davis received no sentence credit.

In August 2014, Davis moved for seven months of sentence credit in his new cases. The State opposed the motion, asserting that Davis had already received the sentence credit in his sentencing after revocation, and that Davis completed his sentence after revocation prior to his sentencing in the new cases. Thus, the State asserted, awarding credit for the new cases would be awarding double credit prohibited by *State v. Boettcher*, 144 Wis. 2d 86, 100, 423 N.W.2d 533 (1988). The State noted that the 208 days of sentence credit awarded in the sentencing after revocation gave Davis credit for his confinement from June 7, 2011, through December 31, 2011, and was therefore short by three days of custody. The State asserted that Davis received all the credit he was due for his time in custody from June 7, 2011, to January 19, 2012, and is not entitled to any credit in his later cases. The circuit court denied the motion for sentence credit.

Davis argues that he is entitled to 226 days of sentence credit, for the time he was in custody from June 7, 2011, to January 19, 2012, contending that that custody was in connection with the conduct for which he was sentenced in September 2012. *See* WIS. STAT. § 973.155(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.”). Davis cites *State v. Hintz*, 2007 WI App 113, ¶8, 300 Wis. 2d 583, 731 N.W.2d 646, for the proposition that “sentence credit must be awarded under WIS. STAT. § 973.155(1)(b) for time in custody on an extended supervision hold if the hold was at least in part due to the conduct resulting in the new conviction.”

The State responds that Davis is not entitled to any credit for the time he was in custody from June 7, 2011, to January 3, 2012, because Davis already received credit for that time in his sentence after revocation. The State points out that Davis’s ten-month jail sentence was completed prior to the sentencing in these cases in September 2012.² Thus, the State contends, Davis is not entitled to sentence credit in these cases when he already received the same credit toward an earlier, already completed sentence. *See State v. Morricks*, 147 Wis. 2d 185, 186-87, 191, 432 N.W.2d 654 (Ct. App. 1988) (rejecting Morricks’s “claim[] [for] credit for a period of incarceration ... for which he received day-for-day credit in connection with an earlier sentence,” already completed at the time of sentencing in the current case, because “we s[aw] no difference in principle between consecutive sentences and the two separate and distinct sentences at issue

² Davis was sentenced after revocation on January 3, 2012, to ten months of jail time with 208 days of sentence credit. We calculate Davis’s sentence after revocation as ending in early April 2012. It appears from the record that Davis was released on January 19, 2012, although neither party explains why that occurred.

here with respect to computation of presentence detention credit”). The State then contends that Davis is not entitled to any sentence credit for the time he was in custody from January 3, 2012, to January 19, 2012, because he was serving his sentence on revocation at that time. *See State v. Beets*, 124 Wis. 2d 372, 378, 369 N.W.2d 382 (1985) (holding that, although the defendant had been in custody both on a probation hold for a prior conviction and awaiting trial on a new crime, “any days spent in confinement after the revocation of probation and the imposition of sentence arise out of, and are connected not with the [new crime], but the unrelated conduct which resulted in the [prior] convictions”; thus, “any connection which might have existed between custody for the [prior crime] and the [new crime] was severed when the custody resulting from the probation hold was converted into a revocation and sentence”).

We agree with the State that Davis is not entitled to sentence credit in these cases for time that was already credited against his previously completed sentence after revocation. We also agree with the State that Davis is not entitled to sentence credit for the days he spent in custody following his January 3, 2012 sentencing after revocation. However, the period from June 7, 2011, through January 3, 2012, includes 211 days, and Davis received only 208 days of credit. The State conceded in the circuit court that Davis did not receive sentence credit for three days he spent in custody between June 7, 2011, and January 3, 2012.³ On appeal, the State asserts that Davis received all of the sentence credit he was due for his time in confinement from June 7,

³ The State’s response in the circuit court stated that “the calculation [for sentence credit] was flawed,” and that Davis “should have been credited with three more days”; it then asserted that Davis was released on January 19, 2012, after completing his sentence after revocation, and that Davis “got credit for the time from June 7, 2011, until January 19, 2012,” in his sentencing after revocation. The response did not explain how Davis was credited for the three days missing from the flawed calculation of sentence credit.

2011, to January 3, 2012, when he received 208 days of sentence credit in his sentencing after revocation. However, the State does not explain how it reached that calculation, nor does it address its concession in the circuit court. We conclude that the State effectively concedes that Davis is entitled to an additional three days of sentence credit. We therefore reverse and remand for the circuit court to award three additional days of sentence credit in Dane County Circuit Court case number 2011CF987. Because the other cases in these appeals were imposed consecutive to case number 2011CF987, the sentence credit should be imposed in that case only. *See Boettcher*, 144 Wis. 2d at 100.

IT IS ORDERED that the order is summarily reversed pursuant to WIS. STAT. RULE 809.21, and the case remanded with directions.

Diane M. Fremgen
Clerk of Court of Appeals