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DISTRICT IV

October 21, 2015

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

2014AP452-CR

State of Wisconsin v. David J. Cobbs (L.C. # 1996CF281)

Before Higginbotham, Sherman, and Blanchard, JJ.

David Cobbs appeals an order that denied his request for sentence credit relating to time he spent on probation with a Global Positioning Device (GPS). After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm for the reasons discussed below.

WISCONSIN STAT. § 973.155(1)(a) provides that an “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

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

conduct for which [the] sentence was imposed.” There is a bright line rule that an offender is not in “custody” for sentence credit purposes unless he would be subject to an escape charge for leaving his or her status. *State v. Magnunson*, 2000 WI 19, ¶25, 233 Wis. 2d 40, 606 N.W.2d 536. By statute, escape charges do not apply to offenders while they are on parole, probation, or extended supervision. WIS. STAT. § 946.42(1)(a)2.

As Cobbs implicitly conceded by not filing a reply brief, *Magnunson* controls the outcome here. The circuit court correctly determined that Cobbs was not entitled to sentence credit while he was on probation, regardless whether GPS was a condition of that probation.

IT IS ORDERED that the circuit court’s order denying Cobbs’s request for sentence credit is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals