

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 20, 2000

Cornelia G. Clark
Acting 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 WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1078-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRYAN C. GEHIN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Sauk County:
VIRGINIA WOLFE, Judge. *Reversed and cause remanded.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Bryan Gehin appeals the trial court's order denying his motion for sentence credit. The issue is whether Gehin is entitled to credit against a sentence imposed on him for theft. We conclude that he is entitled to credit. Therefore, we reverse.

¶2 Gehin was charged with criminal damage to property, entry into a locked vehicle and theft. He pled no contest to the charges. The trial court convicted him of criminal damage to property and entry into a locked vehicle, withheld sentence, and placed him on probation for thirty-six months. The trial court deferred further prosecution on the theft charge.

¶3 Gehin's probation was subsequently revoked. The trial court then sentenced Gehin to six months in jail for criminal damage to property and six months in jail for entry into a locked vehicle, to run consecutively. The trial court also revoked the deferred prosecution agreement and sentenced Gehin to one year for theft, to run concurrently with the other two sentences. The trial court gave Gehin 153 days of sentence credit toward the two six-month sentences, but no credit on the one-year concurrent sentence for theft.¹

¶4 Gehin moved the trial court to amend the judgment of conviction to allow credit toward the theft sentence, as well, because it was imposed concurrently with the other two sentences. The trial court denied the motion.

¶5 When concurrent sentences are imposed at the same time for offenses arising out of the same course of conduct, sentence credit should be given against each sentence imposed. *See State v. Ward*, 153 Wis. 2d 743, 452 N.W.2d

¹ The judgment of conviction, signed by the trial court clerk on the trial judge's behalf, incorrectly states that Gehin is entitled to 306 days of sentence credit, double the credit to which he was actually entitled. Because the sentencing transcript clearly shows that the trial judge ordered that 153 days of credit be applied to counts one and two, we order the trial court to correct the judgment of conviction to reflect that Gehin is entitled to 153 days of credit when this case is remanded. *Cf. Mikrut v. State*, 212 Wis. 2d 859, 868, 569 N.W.2d 765 (Ct. App. 1997) (holding that an action by a trial court clerk that does not reflect the directions given by the judge is void and of no legal effect); *see also State v. Boettcher*, 144 Wis. 2d 86, 100-01, 423 N.W.2d 533 (1988) (holding that sentence credit on consecutive sentences is applied to only the first of the consecutive sentences).

158 (Ct. App. 1989); WIS. STAT. § 973.155(1) (1997-98).² In *Ward*, we explained that “[a]pplying pre-sentence credit against only one of the concurrent ... terms defeats the concurrent nature of the sentence because the first term is reduced ... while the remaining ... terms stand....” *Ward*, 153 Wis. 2d at 745. If Gehin is not awarded credit on the theft sentence, the practical effect will be to deny him any credit at all for his presentence incarceration on these charges.

¶6 The State argues that *Ward* is distinguishable because Gehin was in deferred prosecution status on the theft charge when he was incarcerated prior to revocation and thus was not “in custody” for that charge.³ Nothing in *Ward* so limits its application. Our decision in *Ward* was based on the fact, equally applicable here, that the concurrent nature of the sentences would be defeated if sentence credit is not applied against each concurrent sentence imposed at the same time. *See id.*

¶7 Based on *State v. Tuescher*, 226 Wis. 2d 465, 472-79, 595 N.W.2d 443 (Ct. App. 1999), the State next argues that Gehin is not entitled to credit because the theft conviction did not arise from the “same course of conduct” as the other two convictions. The *Tuescher* “same course of conduct” analysis is not applicable to this case because all three sentences were imposed at the same time. As we explained in *Tuescher*, “[t]he application of the statute is ... relatively straightforward when multiple sentences are imposed at the same time. If the

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

³ WISCONSIN STAT. § 973.155(1), the sentence credit statute, provides that “[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.”

sentences are concurrent, time spent in pre-sentence custody is credited toward each sentence.” *Id.* at 469.

By the Court.—Order reversed and cause remanded.

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

