

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 15, 2015

Diane M. Fremgen
Clerk of Court of Appeals

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.

Appeal No. 2014AP2562-CR

Cir. Ct. No. 2008CF242

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THOMAS W. SHELLEY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Marathon County:
MICHAEL MORAN, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Thomas Shelley, pro se, appeals an order denying his motion for sentence credit. Shelley argues he is entitled to 672 days of pretrial incarceration credit. We reject Shelley's arguments and affirm the order.

BACKGROUND

¶2 On January 11, 2008, Shelley was arrested for the conduct that led to the charges in the present case, Marathon County Circuit Court case No. 2008CF242. On the same day as the arrest, Shelley was placed on an extended supervision hold in Marathon County Circuit Court case No. 2004CF764. On June 2, 2008, Shelley's extended supervision in case No. 2004CF764 was revoked, and on November 10, 2008, Shelley was sentenced to two years of confinement, to be served "concurrent to any other sentence he's serving in Wisconsin at this point in time." On November 13, 2009, Shelley pleaded no contest to delivery of non-narcotic drugs as a repeater in the present case. The court imposed and stayed a ten-year sentence consisting of seven years' initial confinement and three years' extended supervision, and placed Shelley on three years' probation.

¶3 Shelley filed the underlying motion for sentence credit, seeking credit both for (1) the time he spent in custody from his January 11, 2008 arrest until the November 10, 2008 sentencing in case No. 2004CF764; and (2) the time he was in custody from November 10, 2008 until his November 13, 2009 sentencing in the present case. The circuit court denied the motion after a hearing and this appeal follows.

DISCUSSION

¶4 Whether a defendant is entitled to sentence credit pursuant to WIS. STAT. § 973.155¹ is a question of law we review independently. *State v. Rohl*,

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

160 Wis. 2d 325, 329, 466 N.W.2d 208 (Ct. App. 1991). In order to receive sentence credit, an offender must establish: (1) that he or she was in “custody”; and (2) that the custody was in connection with the course of conduct for which the sentence was imposed. *State v. Dentici*, 2002 WI App 77, ¶5, 251 Wis. 2d 436, 643 N.W.2d 180.

¶5 With respect to the time Shelley spent in custody from his January 11, 2008 arrest and extended supervision hold to the November 10, 2008 sentence after revocation in case No. 2004CF764, Shelley received credit for that time against the two-year reconfinement imposed in case No. 2004CF764. Shelley nevertheless contends he is entitled to dual credit because the sentencing court in case No. 2004CF764 ordered his reconfinement term to be served concurrently to any other sentence Shelley was then serving. Shelley, however, had not yet been convicted or sentenced for the underlying case. Moreover, “dual credit is not permitted” where a defendant has already received credit against a sentence which has been, or will be, separately served. *State v. Jackson*, 2000 WI App 41, ¶19, 233 Wis. 2d 231, 607 N.W.2d 338 (citing *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988)). Because Shelley already received credit for this time against the sentence after revocation imposed in case No. 2004CF764, he is not entitled to have it applied again.²

¶6 Turning to the time Shelley spent in custody from the November 10, 2008 sentence after revocation in case No. 2004CF764 until his November 13,

² We note that Shelley impermissibly cites an unpublished opinion, *State v. Ferguson*, No. 1997AP2572, unpublished slip op. (WI App Sept. 3, 1998). Unpublished opinions issued before July 1, 2009, are of no precedential value and may not be cited except in limited instances not applicable here. See WIS. STAT. RULE 809.23(3).

2009 sentencing in the present case, his incarceration during that time was custody in connection with the 2004 case. As noted above, a defendant is entitled to sentence credit when his or her confinement is “in connection with the course of conduct for which the sentence was imposed.” The referenced confinement was for conduct relating to his extended supervision revocation in case No. 2004CF764, not for the offense underlying his sentence in the present matter, case No. 2008CF242. Therefore, he is not entitled to the sentence credit sought.

By the Court.—Order affirmed.

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

