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**DISTRICT IV**

November 16, 2016

*To:*

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

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2015AP1866-CR                      State of Wisconsin v. Lanc B. Sheldon (L.C. # 2010CF225)

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

Lanc Sheldon appeals a judgment of conviction awarding him 127 days of sentence credit and an order denying his request for fifty-nine additional days. 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).<sup>1</sup> Because we conclude that Sheldon is not entitled to any additional sentence credit, we affirm.

In November 2010, the Waupaca County District Attorney's Office issued a complaint in the present case charging Sheldon with multiple counts of failure to pay child support. In December 2010, an arrest warrant was issued in the present case but law enforcement was unable to execute the warrant because they could not find Sheldon. On May 17, 2011, Sheldon was arrested on unrelated charges in Outagamie County. At the time, Sheldon was on probation in Calumet County due to a conviction for receiving stolen property. Calumet County placed Sheldon on a probation hold and he remained in custody until July 15, 2011, when he paid costs owed in the Calumet County case. Once Calumet County lifted its hold, Sheldon was arrested in connection with the present case and transferred to Waupaca County, where he made his initial appearance. The circuit court set a signature bond which required Sheldon to report to the sheriff's department for booking prior to his release.

At sentencing in the present case, the circuit court awarded 127 days of sentence credit, which did not include the fifty-nine days that Sheldon spent in custody between May 17 and July 15, 2011. Postconviction, Sheldon requested credit for this fifty-nine-day period. The State filed an opposing brief and the circuit court denied the motion, determining that Sheldon's custody during this period was the result of the Calumet County probation hold and was not in connection with the present case. Sheldon appeals.

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

WISCONSIN STAT. § 973.155(1)(a) entitles a convicted offender to “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.” It is undisputed that Sheldon was in custody from May 17 to July 15, 2011, and that this custody was in connection with the unrelated Outagamie County charges and Calumet County probation hold. Sheldon argues that due to the outstanding December 2010 arrest warrant, his custody was also “in connection with the course of conduct” for which he was sentenced in the present case. In support, he relies on a statement included in a child support agency employee’s email and the notion that he was not immediately released after being discharged from his probation hold, but was instead transported to Waupaca County for the initial appearance in the present case.

We disagree. A defendant seeking sentence credit has the burden of “demonstrating both custody and its ‘connection with the course of conduct for which sentence was imposed.’” *State v. Villalobos*, 196 Wis. 2d 141, 148, 537 N.W.2d 139 (Ct. App. 1995) (quoted source omitted). For sentence credit purposes, there must be a factual connection between the time Sheldon spent in custody and the failure to pay child support offenses. *See State v. Johnson*, 2009 WI 57, ¶3, 318 Wis. 2d 21, 767 N.W.2d 207. Here, Sheldon has not demonstrated that he was held in connection with the outstanding December 2010 arrest warrant during the disputed custodial period. No action was taken on the unexecuted warrant until the conclusion of Sheldon’s custody on the probation hold; Sheldon was not arrested and bond was not set on the instant charges until July 15, 2011. The statement of the child support agency worker does not establish the requisite factual connection between Sheldon’s custody and the conduct for which he was sentenced.

Moreover, Sheldon did not file a reply brief and therefore has not responded to either the State's analysis of WIS. STAT. § 973.155(1)(a) or the sentence credit cases underlying its conclusion that Sheldon is not entitled to additional credit. Unrefuted arguments are deemed admitted. *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*