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**DISTRICT IV**

March 29, 2019

To:

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

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2018AP1195-CRNM      State of Wisconsin v. Cole G. LaViolette  
(L.C. # 2013CF52)

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

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Cole LaViolette appeals an amended judgment of conviction that withdrew 307 days of sentence credit previously granted by stipulation. Attorney Catherine Malchow, appointed counsel for LaViolette, has filed a no-merit report seeking to withdraw as appellate counsel

pursuant to WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and *Anders v. California*, 386 U.S. 738 (1967). LaViolette was sent a copy of the report and has not filed a response. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Upon consideration of the report and an independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

In July 2016, LaViolette was convicted of second-degree sexual assault of a child. The July 2016 judgment stated that LaViolette was not entitled to any sentence credit. LaViolette did not pursue an appeal from the July 2016 judgment.

In June 2017, based on a stipulation by counsel, the circuit court issued an amended judgment stating that LaViolette was entitled to 307 days of sentence credit. In July 2017, acting pro se, LaViolette wrote a letter to the court claiming that he was entitled to 367 days of credit for time spent in custody on a series of probation holds. LaViolette's letter prompted the court to revisit the sentence credit issue, and the court determined that LaViolette was not entitled to any credit. In September 2017, the court issued a new amended judgment reflecting the court's determination.

LaViolette appeals the September 2017 judgment. As the no-merit report states, the only potential issue for appeal is whether LaViolette was entitled to sentence credit. We agree with counsel that there is no arguable merit to this issue.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

The sentence credit statute provides that credit is due for time spent in custody that is “in connection with the course of conduct for which sentence was imposed.” WIS. STAT. § 973.155(1)(a). Thus, to receive the requested credit, LaViolette would need to show that the time spent in custody on his four probation holds was in connection with his sexual assault conduct in this case. We agree with counsel that there is no merit to an argument that LaViolette’s time spent in custody on the probation holds satisfies the in connection with requirement.

First, the probation holds were not based on any probation imposed in this case. LaViolette was never on probation in this case.

Second, the record reveals no factual support for an argument that any of the probation holds were placed based on LaViolette’s course of conduct in this case. *See* WIS. STAT. § 973.155(1)(b); *State v. Beets*, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985).

Finally, we see no basis to argue that, during the probation hold periods, LaViolette was simultaneously in custody on this case. The circuit court found that, prior to the time of the probation holds, LaViolette was on a signature bond in this case. The court also found that the signature bond was never modified or revoked. These findings are supported by the record and not clearly erroneous. *See State v. Hintz*, 2007 WI App 113, ¶5, 300 Wis. 2d 583, 731 N.W.2d 646 (when reviewing sentence credit determinations, we uphold the circuit court’s factual findings unless they are clearly erroneous).

Our review of the record discloses no other non-frivolous argument that LaViolette was entitled to sentence credit.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Catherine Malchow is relieved of any further representation of LaViolette in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*