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DISTRICT I

January 21, 2026

To:

Hon. John A. Franke
Reserve Judge

Christine A. Remington
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Courey A. Agee 456174
Fox Lake Correctional Institution
W10237 Lake Emily Road
Fox Lake, WI 53933

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

2024AP1895-CR

State of Wisconsin v. Courey A. Agee (L.C. # 2020CF3184)

Before White, C.J., Colón, P.J., and Geenen, J.

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).

Courey A. Agee, pro se, appeals a judgment of conviction and a postconviction order. The sole issue presented is whether the circuit court erroneously denied Agee sentence credit for his time in custody serving a revocation sentence in another case. 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 (2023-24).¹ We summarily affirm.

Agee was arrested in this case on September 4, 2020, following a foot chase. He had more than \$3,000 in his pocket. An officer searched the path of the foot chase and found a

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

digital scale, baggies containing controlled substances, and a firearm. Court records revealed that Agee had previously been convicted of a felony. The State charged Agee with possession with intent to deliver more than 15 grams but less than 40 grams of cocaine, and with possession of a firearm as a felon. A jury found him guilty as charged. The circuit court imposed two concurrent sentences resulting in an aggregate 13-year term of imprisonment, and the circuit court ordered Agee to serve that aggregate term concurrently with any another sentence.

Agee moved for postconviction relief. As relevant here, he sought a total of 553 days of sentence credit representing his time in custody from his arrest on September 4, 2020, through January 11, 2022, when he was released from confinement (495 days); and from March 28, 2023, when he was remanded into custody after trial, through his sentencing on May 24, 2023 (58 days). The circuit court granted the request in part. The circuit court awarded Agee credit for his time in custody from September 4, 2020, until January 29, 2021 (147 days); and from March 28, 2023, until May 24, 2023 (57 days).² The circuit court found, however, that on January 29, 2021, Agee was returned to Dodge Correctional Institution to begin serving a revocation sentence for his 2009 conviction for possessing cocaine with intent to deliver, a crime that he committed in August 2008. The circuit court further found that Agee remained imprisoned on the revocation sentence until January 11, 2022, when he was released to extended supervision. The circuit court concluded that Agee was not entitled to credit in the instant case for the days that he was imprisoned and serving a revocation sentence for the 2008 offense.

² Although Agee sought presentence credit for the day of sentencing, the circuit court excluded that day from the sentence credit award. See *State v. Kontny*, 2020 WI App 30, ¶12, 392 Wis. 2d 311, 943 N.W.2d 923. On appeal, Agee does not discuss that aspect of the circuit court's decision, and we do not address it. See *State v. Ledger*, 175 Wis. 2d 116, 135, 499 N.W.2d 198 (Ct. App. 1993) (explaining that issues not briefed or argued are deemed abandoned and will not be reviewed).

Accordingly, the circuit court awarded Agee a total of 204 days of credit. He appeals, seeking presentence credit for the period from January 29, 2021, through January 11, 2022.³

“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.” WIS. STAT. § 973.155(1). Whether a defendant is entitled to sentence credit under § 973.155, is a question of law that we review independently, but we will uphold the circuit court’s underlying factual determinations unless they are clearly erroneous. *State v. Zahurones*, 2019 WI App 57, ¶12, 389 Wis. 2d 69, 934 N.W.2d 905.

To receive sentence credit, a defendant must establish: “(1) that he or she was ‘in custody’ during the relevant time period; and (2) that the custody was ‘in connection with the course of conduct for which sentence was imposed.’” *Id.*, ¶13 (citations omitted). No dispute exists that Agee was in custody during the 348-day period at issue. Before he could receive credit for that period against his sentences in this case, however, Agee had the burden to establish a connection between that custody and the course of conduct for which the circuit court sentenced him here. *See State v. Carter*, 2010 WI 77, ¶11, 327 Wis. 2d 1, 785 N.W.2d 516.

Familiar rules apply to our review of whether Agee carried his burden. First, a defendant is not entitled to the same custody credit for two or more sentences merely because the sentences are concurrent; rather the defendant must demonstrate that the custody was “in connection with” the course of conduct giving rise to each concurrent sentence for which the defendant seeks

³ Agee incorrectly calculates the period from January 29, 2021, through January 11, 2022, as 349 days. The period totals 348 days.

credit. See *State v. Johnson*, 2009 WI 57, ¶¶2-3, 76, 318 Wis. 2d 21, 767 N.W.2d 207. Second, a defendant who is sentenced for crimes is usually “not entitled to pre-sentence credit for time spent serving a sentence on a different, unrelated charge.” *State v. Tuescher*, 226 Wis. 2d 465, 470, 595 N.W.2d 443 (Ct. App. 1999). This is so because “unless the acts for which the first and second sentences are imposed are truly related or identical, the sentencing on one charge severs the connection between the custody and the pending charges.” *Id.* at 476 (emphasis omitted) (quoting *State v. Beets*, 124 Wis. 2d 372, 383, 369 N.W.2d 382 (1985)). As the *Beets* court explained, when an offender is in prison serving a sentence, it is “irrelevant” that the offender is also awaiting trial on a separate charge, because the pending charge has no effect on the offender’s liberty. *Id.*, 124 Wis. 2d at 379. “His ability to make bail [on the pending charge] became immaterial.”⁴ *Id.*

Here, Agee fails to offer anything in the law or in the record showing that the course of conduct underlying his 2008 charge was connected to the course of conduct underlying his charges in the instant case. Therefore, under *Johnson* and *Tuescher*, he is not entitled to credit against his sentences in the instant case for any time spent serving his revocation sentence.

The next question is how much of Agee’s time in custody was spent serving the revocation sentence. “The sentence of a revoked parolee or person on extended supervision resumes running on the day he or she is received at a correctional institution[.]” *State v. Davis*, 2017 WI App 55, ¶10, 377 Wis. 2d 678, 901 N.W.2d 488 (quoting Wis. STAT. § 304.072(4)).

⁴ Here, for example, the record shows that Agee posted bail in the instant case on December 9, 2021, but he remained imprisoned until January 11, 2022, when he completed his reconfinement for the 2008 offense and was released into the community.

The circuit court found that Dodge Correctional Institutional received Agee on January 29, 2021, and that he remained imprisoned serving his revocation sentence from that date until his release to extended supervision on January 11, 2022. No party disputes these findings.

In light of the circuit court’s findings, Agee’s time in custody from January 29, 2021, until January 11, 2022, was not in connection with the charges in the instant case but rather was in connection solely with his 2008 conduct. Therefore, Agee is not entitled to sentence credit for those 348 days against his sentences in the instant case. *See State v. Gavigan*, 122 Wis. 2d 389, 393, 362 N.W.2d 162 (Ct. App. 1984) (holding that “an offender is not entitled to sentence credit under [WIS. STAT. §] 973.155 ... for custody that is being served in satisfaction of another unrelated criminal sentence”).

Agee asserts that the circuit court erred in denying him credit for his time serving his revocation sentence because his “was not a case involving consecutive sentences.” In this regard, he particularly faults the circuit court for its allegedly “erroneous reading” of *Davis*. However, all of the foregoing authorities, including *Davis*, involve the determination of sentence credit for an offender who, like Agee, received concurrent sentences. *See Davis*, 377 Wis. 2d 678, ¶3; *Gavigan*, 122 Wis. 2d at 391; *Beets*, 124 Wis. 2d at 375; *Tuescher*, 226 Wis. 2d at 468; *Johnson*, 318 Wis. 2d 21, ¶2; *Carter*, 327 Wis. 2d 1, ¶3; *Zahurones*, 389 Wis. 2d 69, ¶1. We are thus unable to discern the analytical error that Agee believes occurred, and we decline to develop an argument for him. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

Moreover, the respondent’s brief that the State filed in this matter includes an explanation of why the circuit court properly applied applicable law and correctly denied the 348 days of

credit at issue. Agee failed to file a reply brief and thus conceded the State's arguments. *See United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (holding that an appellant's failure to respond to arguments in a respondent's brief may be taken as a concession). For all the foregoing reasons, we affirm.

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals