



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

August 20, 2026

To:

Hon. Brian A. Pfitzinger
Circuit Court Judge
Electronic Notice

Michael J. Conway
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

Stephen Matthew Davis
c/o MMHI
301 Troy Drive
Madison, WI 53704

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

2025AP1197-CR

State of Wisconsin v. Stephen Matthew Davis (L.C. # 2022CF340)

Before Graham, P.J., Kloppenburg, and Nashold, 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).

Stephen Matthew Davis appeals a circuit court order denying his motion for modification of his NGI (not guilty of mental disease or defect) commitment order based on the existence of a new factor and his motion for additional credit on his NGI commitment time. Based on 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 affirm.

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

This appeal arises from Dodge County Case No. 2022CF340, in which Davis was charged with misdemeanor retail theft and other crimes. At the time that Davis was arrested and taken into custody on those charges on June 1, 2022, he was also facing charges in unrelated Sauk County cases in which he had been released on signature bond.

Davis remained in custody from June 1, 2022, until he was sentenced in the Sauk County cases on January 17, 2023. At that point, he began serving a term of confinement in accordance with those Sauk County sentences. That term of confinement was slated to end on January 12, 2025.

Meanwhile, on June 7, 2024, Davis pleaded guilty to three charges in this Dodge County case and the parties agreed to stipulate to NGI verdicts. The State recommended a three-year NGI commitment with the “intent ... for [Davis] to have a total of three years” of commitment after Davis finished serving his confinement from the Sauk County cases on January 12, 2025. Davis raised the concern that an NGI commitment could not be ordered “consecutive to a prison sentence.” To avoid that issue and achieve the same goal of three years of commitment following Davis’s release from the Sauk County confinement, the State proposed that the circuit court order a 3.5-year commitment that would take effect immediately.

The circuit court accepted Davis’s pleas, found him NGI, and imposed the State-recommended commitment of 3.5 years. The court ordered institutional care and determined that the state department of corrections (DOC) and the state department of health services (DHS) would have “to work together to figure out where [Davis would be] best placed to meet his ... psychiatric needs.” The court said that it did not “have any idea” what DHS would do in that regard.

In October 2024, the parties stipulated to two forms of postconviction relief. First, they agreed that Davis was entitled to 230 days of credit toward his NGI commitment, which corresponds to the period between his June 2, 2022 arrest in Dodge County and his January 17, 2023 sentencing on the Sauk County cases. Second, the parties agreed that conditional release for the remainder of Davis's NGI commitment was appropriate upon his expected release from prison on January 12, 2025. The circuit court issued an order granting both the stipulated credit and the conditional release, and Davis was ordered to be transferred to a temporary living facility on January 13, 2025.

As relevant to this appeal, Davis filed two pro se motions in February 2025. In one, Davis moved for modification of the 3.5-year term of his commitment based on a new factor. More specifically, he asserted that the parties and the circuit court all anticipated that he would immediately be transferred to a mental health facility after the NGI commitment hearing in June 2024, and his commitment should be shortened because that did not happen. In the other motion, Davis moved for additional credit toward his NGI commitment based on the approximately eighteen months he spent serving his sentence in the Sauk County cases before he entered his plea in the Dodge County case.

The circuit court denied these motions at a hearing. The court explained that it had been aware that Davis might serve the first six months of his 3.5-year NGI commitment in prison. Therefore, the fact that Davis was not immediately transferred to a mental health treatment facility was not a new factor justifying rehearing on the commitment order. With respect to Davis's motion for additional credit, the court stated that Davis had already been granted all of the credit to which he was entitled. Davis appeals, renewing his arguments on both issues.

We begin with Davis’s motion for modification of the commitment order based on a new factor.² A “new factor” is defined as “a fact or set of facts highly relevant to the imposition of [commitment], but not known to the trial judge at the time of original [commitment], either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.” See *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). Information is “highly relevant” to a commitment order if it affects a factor the circuit court relied on in determining the terms of the commitment. See, e.g., *State v. Armstrong*, 2014 WI App 59, ¶16, 354 Wis. 2d 111, 847 N.W.2d 860; *State v. Carroll*, 2012 WI App 83, ¶10, 343 Wis. 2d 509, 819 N.W.2d 343. To determine the factors a court relied on, we look to the court’s “actual words” at the commitment hearing. See *Carroll*, 343 Wis. 2d 509, ¶10.

Whether the facts presented by a defendant constitute a new factor is a question of law that we review independently. *Harbor*, 333 Wis. 2d 53, ¶36. If a new factor is established, the circuit court has discretion to determine whether it justifies modification of the commitment order. See *id.*, ¶37. If the defendant fails to establish the existence of a new factor, there is no need for the court to consider whether modification of the commitment order is warranted. See *id.*, ¶38.

² Davis’s motion in the circuit court was titled “Motion for Sentence Modification,” but an NGI commitment is not a “sentence” within the meaning of WIS. STAT. § 973.15. *State v. Harr*, 211 Wis. 2d 584, 587, 568 N.W.2d 307 (1997). In this appeal, the parties appear to agree that the new factor test that applies to sentence modifications under *State v. Harbor*, 2011 WI 28, 333 Wis. 2d 53, 797 N.W.2d 828, also applies to rehearing of an NGI commitment order. For the purposes of this appeal, we assume without deciding that this is correct.

Here, Davis asserts that the purpose of his NGI commitment was for him to be immediately transferred from prison to a mental health facility, enabling him to serve the remaining six months of his term of confinement for the Sauk County cases in a mental health facility. He further asserts that his term of commitment should be modified—reduced by six months—because that transfer did not happen. The State responds that Davis has not established the existence of a new factor that could justify rehearing on his NGI commitment because he has not shown by clear and convincing evidence that the circuit court had any expectation that Davis would serve the remaining six months of his unrelated term of confinement at a mental health facility.

We agree with the State that the circuit court’s statements at the June 7, 2024 hearing show that it was not relying on an immediate transfer to a mental health facility in determining the appropriate length and conditions of Davis’s NGI commitment. To the contrary, the court stated that DOC and DHS would have “to work together to figure out where [Davis would be] best placed to meet his ... psychiatric needs” and that the court did not “have any idea what DHS [would] do.” Accordingly, Davis has not shown that the expectation of an immediate transfer was “highly relevant” to the NGI commitment order and has not met his burden to show the existence of a new factor that could justify modification of that order.³

We turn to Davis’s motion for credit for the approximately 18 months between January 17, 2023 and June 7, 2024. As noted, Davis was serving his term of confinement in the

³ Davis did not file a reply brief, which may be deemed a concession to the arguments raised in the State’s response. See *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (propositions asserted by a respondent on appeal and not disputed by the appellant in the reply brief are taken as admitted).

Sauk County cases during those 18 months, and the circuit court had not yet imposed his 3.5-year NGI commitment in the Dodge County case. Whether a defendant is entitled to credit under a set of undisputed facts presents a question of law that we review independently. See *State v. Dachelet*, 2025 WI App 42, ¶8, 417 Wis. 2d 618, 24 N.W.3d 614.

WISCONSIN STAT. § 971.17(1) establishes that the commitment periods for individuals found NGI are subject to the credit provisions of WIS. STAT. § 973.155. For credit to be awarded under § 973.155, the defendant must have been “in custody” for the period in question and the custody must have been “in connection with the course of conduct for which [the commitment] was imposed.” § 973.155(1)(a).

Case law provides guidance on what it means for custody to have been “in connection with” a particular course of conduct, and when that connection is “severed.” See *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985); *State v. Harr*, 211 Wis. 2d 584, 568 N.W.2d 307 (Ct. App. 1997). When a defendant in custody is serving a sentence in one case and simultaneously awaiting trial in another, the time spent in custody can be credited only toward the sentence that the defendant is actively serving. *Beets*, 124 Wis. 2d at 379. Once sentence is imposed in a case, the defendant’s “right to be at liberty” is not related to the viability of still-pending charges in the other case; any connection to those charges is “severed” by the imposition of sentence, even if there was a connection between confinement and the pending charges before the imposition of sentence. *Id.* As applied here, the connection between Davis’s custody and the Dodge County conduct that led to his commitment was effectively severed by the imposition of the criminal sentence in the Sauk County cases. *Id.*

Davis’s argument to the contrary is unpersuasive. He cites **Harr**, 211 Wis. 2d at 589, for the proposition that an NGI commitment is not a sentence and “a sentence cannot be ordered consecutive to an NGI commitment,” and he argues that the failure to credit the time at issue here effectively results in an improper NGI commitment consecutive to a prison sentence. But **Harr** did not hold that NGI commitments could never be served before, during, or after prison sentences, and here, Davis started serving his commitment on the day it was imposed. To the extent that Davis means to argue that the fact that he is seeking credit for the commitment that was ultimately ordered is relevant because a commitment order is not a sentence, **Harr** confirms that general sentence-credit principles apply to cases involving commitments. See **Harr**, 211 Wis. 2d at 587; see also **State v. Trepanier**, 2014 WI App 105, ¶19, 357 Wis. 2d 662, 855 N.W.2d 465. We therefore conclude that the circuit court properly denied Davis’s motion for additional credit.

IT IS ORDERED that the order is 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