

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 16, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 97-3481

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. JOHNNIE BARNES,

PETITIONER-APPELLANT,

v.

**STATE OF WISCONSIN AND MARIANNE COOKE, WARDEN,
KETTLE MORAINÉ CORRECTIONAL INSTITUTION,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Rock County:
JOHN W. ROETHE, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. Johnnie Barnes appeals an order denying his petition for a writ of habeas corpus. Barnes seeks an adjustment of the maximum discharge date on sentences he began serving in 1989. The dispositive issue is whether Barnes should receive credit for time served while he was on parole. We

conclude that he is not entitled to credit for time served on parole, and therefore affirm.

Barnes began serving consecutive five- and three-year prison terms in April 1989. In April 1991 he was placed on parole. Four years later, the Department of Corrections revoked parole and returned him to prison. When paroled in 1991, Barnes's maximum "time left to serve" was five years, nine months and eight days. Consequently, when he was revoked, the department computed his new maximum discharge date as being five years, nine months and eight days from the date he was reincarcerated in connection with the revocation.

In this proceeding, Barnes contends that the maximum discharge date on his sentences, now computed as July 14, 2000, should be recalculated to award credit for each day of the three years and six months he was on parole, giving him a revised maximum discharge date of December 12, 1997.

The DOC properly calculated the July 14, 2000 maximum discharge date. Section 302.11(7)(a), STATS., provides that the Department of Corrections may return a parolee to prison "for a period up to the remainder of the sentence for a violation of the conditions of parole." That section defines the remainder of the sentence as "the entire sentence, less time served in custody prior to parole." Therefore, under this section, the defendant receives credit for time served on parole only if the department, in its discretion, awards it. *See State ex rel. Ludtke v. DOC*, 215 Wis.2d 1, 14-15, 572 N.W.2d 864, 870 (Ct. App. 1997), *review denied*, 217 Wis.2d 518, ___ N.W.2d ___ (1998). It is not an entitlement.

Barnes argues that the question is not whether the DOC awarded him credit for his parole time, but whether his sentence simply continued to run during the period he was on parole. That argument, however, is also resolved in the

department's favor by the plain language of § 302.11(7)(a), STATS. "The remainder of the sentence is the entire sentence, less time served in custody prior to parole." Time served on parole does not affect the computation.¹

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ Barnes also argues that he completed his five-year sentence while on parole, and that he cannot be required to serve the remainder of a completed sentence. Barnes is mistaken. According to § 302.11(3), STATS., "[a]ll consecutive sentences shall be computed as one continuous sentence." Thus, for the purposes of parole, Barnes has but one continuous sentence, and the DOC can require him to serve what remains of it. See also *Ashford v. Division of Hearings & Appeals*, 177 Wis.2d 34, 43-44, 501 N.W.2d 824, 827 (Ct. App. 1993).

