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DISTRICT II

December 6, 2017

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

2016AP1984-CR

State of Wisconsin v. Anthony M. Volpendesto (L.C. #2004CF203)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, 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).

Anthony M. Volpendesto appeals from an order of the circuit court denying his motion for sentence credit. 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 (2015-16).¹ We summarily affirm.

The history of this case was previously detailed in this court’s decision in *State v. Volpendesto*, No. 2013AP1679-CR, unpublished slip op. (WI App July 9, 2014). Relevant to this appeal, Volpendesto filed a motion in the circuit court seeking 132 days of sentence credit for his time spent in the Washington County jail, from July 21, 2004, to July 23, 2004, and from August 10, 2005, to December 19, 2005.²

Whether a defendant is entitled to sentence credit under WIS. STAT. § 973.155 is a question of law we review de novo. *State v. Lange*, 2003 WI App 2, ¶41, 259 Wis. 2d 774, 656 N.W.2d 480. Under § 973.155, “[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.” The defendant has the burden to prove both “custody” and that the custody was in connection with the course of conduct for which the Wisconsin sentence was imposed. *State v. Carter*, 2010 WI 77, ¶11, 327 Wis. 2d 1, 785 N.W.2d 516 (citation omitted).

The State does not contest that Volpendesto was in custody during the relevant periods, but argues that the confinement was not in connection with the Wisconsin sentence. As to the July 2004 custody, the State argues that Volpendesto was in custody in connection with a

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The judgment of conviction reflects eight days of sentence credit.

Michigan charge.³ We agree. Volpendesto received credit for those dates in his Michigan sentence as the record reveals that he began serving his sentence on July 20, 2004. The Michigan sentence was to run consecutive to the Wisconsin sentence, and if he was granted credit for these dates he would receive double credit, to which he is not entitled. *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988).

Volpendesto also seeks credit for the time he was in custody in Wisconsin after the court sentenced him in Michigan. Volpendesto was transferred to Wisconsin pursuant to WIS. STAT. § 976.05, the Interstate Agreement on Detainers Act. Under § 976.05(5)(g), Volpendesto was considered to be in Michigan's custody during this period in Wisconsin, and his Michigan sentence continued to run while he was detained. *See* § 976.05(5)(f), (g). Since he was still serving his Michigan sentence during the period from August to December 2005, he was not collecting credit toward his future Wisconsin sentence, and to grant him the relief he seeks would result in an award of double credit. *See Boettcher*, 144 Wis. 2d at 87.

Volpendesto argues that his sentence in Michigan was related to his sentence in Wisconsin as it “was in the same course of conduct or ‘SPREE’ as the Wisconsin case.” The record is void of information concerning Volpendesto's robbery conviction in Michigan, and we are therefore unable to ascertain whether Volpendesto's robbery in Michigan might be considered within the same crime “spree” as the felony theft charge in Wisconsin. Volpendesto

³ The record indicates that Volpendesto was charged in Wisconsin with felony theft on June 9, 2004, and a warrant was issued for his arrest. On July 22, 2004, he was in court for an initial appearance on that charge, and the State explained that he had been extradited from Illinois as he had just completed his prison sentence in Illinois and there was also a warrant out for him in Michigan. Volpendesto posted bail on the Wisconsin charge, and was later arrested and extradited to Michigan to face robbery charges, where he remained until he was sentenced.

has failed to meet his burden. Even if we were to assume that the two convictions could be considered in the same crime spree, however, once Volpendesto began serving his sentence in the Michigan robbery case, he was not entitled to additional credits on the Wisconsin sentence. *See State v. Beets*, 124 Wis. 2d 372, 383, 369 N.W.2d 382 (1985) (“[I]t is clear that, 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.”).

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

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

Diane M. Fremgen
Clerk of Court of Appeals