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March 28, 2018

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

2017AP1412-CRNM State of Wisconsin v. Joseph L. St. Germaine (L.C. #2013CF112)

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

Joseph L. St. Germaine appeals from an order denying his pro se motion pursuant to WIS. STAT. § 973.155 (2015-16)¹ for sentence credit and for an amended judgment of conviction. He was given zero days' sentence credit but contends he should have been awarded 740 days.

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

St. Germaine's appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). St. Germaine received a copy of the report and was advised of his right to file a response but has elected not to. Upon considering the report and independently reviewing the record, we conclude there is no arguable merit to any issue that could be raised on appeal. We summarily affirm the order. *See* WIS. STAT. RULE 809.21.

St. Germaine pled no contest in Sawyer County case No. 2013CF112 to one count of burglary; ten counts of theft of moveable property were dismissed and read in. He was sentenced to five years' initial confinement and five years' extended supervision, concurrent to his sentence in case No. 2012CF56, an unrelated Sawyer County case. The parties stipulated that he was entitled to no sentence credit in case No. 2013CF112.

St. Germaine did not timely file a notice of intent to pursue postconviction relief after being sentenced. Instead he moved pro se under WIS. STAT. § 973.155, seeking 740 days' sentence credit. When that motion was denied, he moved for postconviction relief under WIS. STAT. RULE 809.30. *See* § 973.155(6). Appointed appellate counsel has filed this no-merit appeal addressing the only matter before us, the sentence-credit issue.

“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)(a). The offenses in Sawyer County case No. 2012CF56 predate those in this underlying case, do not arise from the same course of conduct, and sentence was not imposed at the same time. All of the sentence credit was applied to case No. 2012CF56. Even if they were imposed at the same time, the fact that they are concurrent “does not alter the statutory mandate that credit toward service of a sentence be based on custody that is ‘in

connection with' the course of conduct giving rise to that sentence: i.e., custody factually connected with the course of conduct for which sentence was imposed." *State v. Johnson*, 2009 WI 57, ¶3, 318 Wis. 2d 21, 767 N.W.2d 207.

Based on the record, the periods of confinement St. Germaine described in his postconviction motion appear to have been the subject of sentence credit granted in case No. 2012CF56. Further, he stipulated that he was entitled to no sentence credit on this case. In light of the stipulation, this court cannot further address his claim of improperly denied sentence credit. *Cf. State v. Scherreiks*, 153 Wis. 2d 510, 518, 451 N.W.2d 759 (Ct. App. 1989) (a sentence affirmatively approved by the defendant cannot be attacked on appeal). We conclude St. Germaine has received all of the credit to which he is entitled.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Roberta A. Heckes is relieved from further representing St. Germaine in this appeal. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals