COURT OF APPEALS
DECISION
DATED AND RELEASED

September 7, 1995

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.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 94-3191-CR
94-3192-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WILLIE BANKSTON,

Defendant-Appellant.

APPEAL from judgments and an order of the circuit court for Dane County: STUART A. SCHWARTZ, Judge. *Affirmed*.

Before Eich, C.J., Gartzke, P.J., and Dykman, J.

PER CURIAM. Willie F. Bankston appeals[1] from judgments entered June 21, 1994, convicting him of one count of forgery, contrary to § 943.38(2), STATS., and one count of bail jumping, contrary to § 946.49(1)(b),

[1] This appeal was consolidated by order dated December 29, 1994.

STATS., and from an order denying his postconviction motion for relief.[2] The trial court sentenced him to one five-year concurrent prison term and one two-year concurrent prison term with credit for two days. He contends that the trial court erred by failing to consider sentencing him to the intensive sanctions program. He also asserts that he is entitled to an additional 167 days of sentence credit for time spent in jail after his probation officer instructed the jail not to reinstate his Huber law work release privileges. We conclude that the trial court considered sentencing Bankston to the intensive sanctions program but declined to do so. We also conclude that Bankston is not entitled to any sentence credit. We therefore affirm.

BACKGROUND

On July 22, 1993, Bankston pleaded no contest to forgery and bail jumping. He also pleaded no contest to retail theft, contrary to § 943.50(1m), STATS., battery, contrary to § 940.19(1), STATS., and obstructing an officer, contrary to § 946.41(1), STATS. The first two convictions were felonies and the latter three, misdemeanors. For the two felonies, Bankston was placed on probation for two concurrent four-year terms. For the three misdemeanors, he was sentenced to three consecutive four-month jail terms with work release privileges. Bankston also asserts in his brief that he was sentenced to two additional four-month jail sentences, concurrent with each other and consecutive to the three four-month sentences. The record does not show a judgment of conviction for the latter four-month sentences, but for the purpose of this appeal, we will assume that they were imposed.

On November 26, 1993, Bankston was involved in a fight with another jail inmate. This resulted in both a conviction of disorderly conduct and the revocation of his probation for the forgery and bail jumping convictions. On June 21, 1994, he was sentenced to five years in prison on the forgery conviction and a concurrent two-year term on the bail jumping conviction. The trial court also denied Bankston's postconviction motion for sentence credit for time spent in jail after his work release privileges were not reinstated. Bankston appeals.

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[2] Bankston also appeals from a judgment entered July 22, 1993. By order dated January 13, 1995, we concluded that because Bankston did not file a timely appeal as to that judgment, we would not review any issue arising from it in this appeal.

INTENSIVE SANCTIONS

Sentencing is left within the sound discretion of the trial court. ***McCleary v. State***, 49 Wis.2d 263, 276, 182 N.W.2d 512, 519 (1971). Our review is limited to determining whether there exists:

> evidence that discretion was in fact exercised. Discretion is not synonymous with decision-making. Rather, the term contemplates a process of reasoning. This process must depend on facts that are of record or that are reasonably derived by inference from the record and a conclusion based on a logical rationale founded upon proper legal standards.

Id. at 277, 182 N.W.2d at 519.

Citing ***State v. Martin,*** 100 Wis.2d 326, 302 N.W.2d 58 (Ct. App. 1981), Bankston asserts that the trial court erroneously exercised its discretion by failing to consider sentencing him under § 301.048, STATS., the intensive sanctions program. Bankston focuses on a statement made by the trial court at a postconviction hearing: "I do not believe that I need to consider the intensive sanctions program in every single case where I know that it may not be appropriate."

Unlike the trial court in ***Martin***, 100 Wis.2d at 327, 302 N.W.2d at 59, which indicated that it would not consider probation for certain offenses, the trial court in the instant case considered the intensive sanctions program but rejected it. We agree that the court's statement suggests that it did not consider the intensive sanction program. However, only after considering the facts and concluding that the intensive sanctions program was inappropriate did the court sentence Bankston to prison.

Our conclusion that the trial court considered the intensive sanctions program but rejected it is buttressed by the sentencing transcript. The prosecutor argued that the court should not place Bankston in the intensive

sanctions program because of Bankston's unwillingness to work with others and because the Division of Intensive Sanctions (DIS) had already rejected him as an inappropriate candidate. Alternatively, Bankston argued that the intensive sanctions program would be an appropriate alternative to a prison sentence. Bankston argued that while DIS had already rejected him for the program, the court should make the ultimate decision.

The trial court indicated that it had read Bankston's sentencing memorandum in which Bankston requested that he be placed in the intensive sanctions program. The court also noted Bankston's remarks at sentencing that the intensive sanctions program would be appropriate. The court, however, also noted Bankston's propensity for violent behavior and his inability to comply with rules as evidenced by his revocation of probation before completing his jail sentence. The court considered the gravity of the offense, the character of the offender, and the need for public protection. *See* ***McCleary***, 49 Wis.2d at 274-76, 182 N.W.2d at 518-19. We conclude that the court did not erroneously exercise its discretion when it rejected the intensive sanctions program and sentenced Bankston to prison.

SENTENCE CREDIT

Whether Bankston received all of the sentence credit to which he is entitled requires an application of § 973.155(1), STATS., to undisputed facts. This is a question of law which we review *de novo*. ***State v. Riley***, 175 Wis.2d 214, 219, 498 N.W.2d 884, 885 (Ct. App. 1993). Bankston requested 167 days of sentence credit for time spent in jail after his work release privileges were not reinstated. According to Bankston, he was placed on probation while also serving a jail sentence with work release privileges. After fighting with another inmate, Bankston's work release was suspended and probation revocation proceedings were commenced. While he was not placed under a written probation hold, Bankston argues that when the jail refused to reinstate work release, his custody status was upgraded such that his custody was "in part" due to the instructions of his probation officer.

A convicted defendant is entitled to sentence credit for each day spent in custody in connection with the course of conduct for which the sentence was imposed. Section 973.155(1), STATS. A defendant is not entitled to

credit for time spent in custody to satisfy the sentence for another crime. ***State v. Beets***, 124 Wis.2d 372, 379, 369 N.W.2d 382, 385 (1985). In the instant case, Bankston was already in jail serving sentences for several misdemeanors. His custody status was not "upgraded," rather his work release privileges were not reinstated. Work release privileges are just that: privileges which can be withdrawn at any time. They do not affect the custody status of a defendant. Thus, the time Bankston spent in jail after his work release privileges were not reinstated is not related to the sentence he now challenges. Additionally, his being in custody was not "in whole or in part the result of a probation or parole hold," *see* § 973.155(1)(b), and instead was wholly attributable to his serving jail sentences for other crimes. Accordingly, we reject Bankston's argument that he is entitled to an additional 167 days sentence credit.

By the Court.—Judgments and order affirmed.

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