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DISTRICT I

October 1, 2024

To:

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Circuit Court Judge
Electronic Notice

John D. Flynn
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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Joseph F. Owens
Electronic Notice

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

2023AP969-CR

State of Wisconsin v. Corbin Terrence Zebrasky
(L.C. # 2021CF1528)

Before White, C.J., Donald, P.J., and Colón, 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).

Corbin Terrence Zebrasky appeals a judgment of conviction and a postconviction order. The sole issue on appeal is whether the Milwaukee County Circuit Court properly denied him 344 days of sentence credit for time that he spent in presentence custody in Waukesha County. 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 (2021-22).¹

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Zebrasky's confinement in Waukesha County stemmed from his arrests for crimes that he allegedly committed there while he was out of Milwaukee County custody on a signature bond that was never revoked. The Milwaukee County Circuit Court therefore properly denied him credit against his Milwaukee County sentence for his time in Waukesha County confinement. Accordingly, we summarily affirm.

The instant case arose on March 20, 2020, when Zebrasky led City of Glendale police on a high speed chase that ended in a crash. The officers arrested Zebrasky. He was released soon thereafter, but the State later filed a criminal complaint in Milwaukee County Circuit Court charging Zebrasky with several offenses arising out of the March 20, 2020 incident. He failed to appear for a court hearing, and in early June 2021, he was arrested on a bench warrant. On June 8, 2021, he signed a signature bond and was released that same day. Following that release, Zebrasky repeatedly went in and out of custody in Waukesha County for multiple crimes that he allegedly committed there. The specifics of those crimes are not part of the record in this case.² The record shows, however, that Zebrasky resolved the Waukesha County charges on July 13, 2022, and he received 344 days of sentence credit as to each sentence that the Waukesha County circuit court imposed.

Zebrasky then resolved the instant Milwaukee County case by pleading guilty on November 29, 2022, to one count of second-degree recklessly endangering safety. The circuit

² The record here includes copies of two judgments of conviction entered in two separate Waukesha County cases, but the record does not include copies of any other court documents that were originally filed in those cases. The limited information contained in the Waukesha County judgments reflects that on July 13, 2022, Zebrasky was sentenced in Waukesha County for two crimes and that ten additional charges in those two cases were dismissed and read in, as were six separate criminal cases, two traffic cases, and five ordinance violation cases.

court sentenced him that same day to an evenly bifurcated eight-year term of imprisonment, concurrent with any other sentence. The parties agreed at sentencing that Zebrasky had been released from Milwaukee County custody upon signing a signature bond on June 8, 2021, and that the signature bond had never been revoked or rescinded. Zebrasky asserted that he was nonetheless entitled to credit against his Milwaukee County sentence for his time in Waukesha County custody after June 8, 2021. The circuit court withheld a determination of sentence credit pending further submissions from Zebrasky.

Zebrasky subsequently filed a postconviction motion for sentence credit in this case. In addition to requesting credit for the days that he spent in Milwaukee County custody on and before June 8, 2021, he also requested 344 days of credit for the time that he spent in Waukesha County custody after June 8, 2021, until he was sentenced in Waukesha County on July 13, 2022. The circuit court granted him credit for the thirteen days that he spent in Milwaukee County custody in March and June 2020, and denied him credit for any of the 344 days that Zebrasky spent in Waukesha County custody. Zebrasky appeals.³

Pursuant to WIS. STAT. § 973.155(1)(a), “[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 convicted person has the burden to establish both the fact of custody and its connection with the course of conduct for which the person was sentenced. *State v. Carter*, 2010 WI 77, ¶11, 327 Wis. 2d 1, 785 N.W.2d 516. The

³ We recognize that Zebrasky argues in this court that he is entitled to a total of 351 days of sentence credit. However, he includes a chart showing a breakdown of the specific days at issue. The chart includes seven days (March 20, 2020, and June 3-8, 2020) that Zebrasky spent in Milwaukee County custody. The circuit court’s postconviction order explicitly grants him credit for those seven days. Accordingly, only 344 days of credit are actually disputed on appeal.

parties here agree that Zebrasky was in Waukesha County custody during the 344 days at issue. The question is whether that custody was in connection with the same course of conduct for which sentence was imposed in Milwaukee County.

Zebrasky claims that his time in Waukesha County custody was in connection with his criminal conduct in Milwaukee County because, at the time that he committed all of his crimes in both counties, he suffered from the same mental health diagnoses. In support, Zebrasky points to the evaluation prepared by Dr. Jenna Niess, a psychologist who assessed him in May 2022, in regard to the special plea of not guilty by reason of mental disease or defect that he originally entered in this case. As Zebrasky notes, Dr. Niess's May 2022 report reflects that she had previously evaluated Zebrasky in 2021 in regard to the special pleas that he had similarly entered in six Waukesha County cases.⁴ Dr. Niess explained in her May 2022 evaluation that her clinical findings in 2021 led her to “apply diagnoses of Major depressive disorder; Unspecified personality disorder (Borderline and Antisocial features),” and five substance abuse disorders. Dr. Niess next determined that at the time of the March 2020 offenses in Milwaukee County, Zebrasky carried a diagnosis of “unspecified depressive disorder.”⁵ She further determined that, at that time, he had the same five substance abuse disorders and carried the same diagnosis of “Unspecified personality disorder (Borderline and Antisocial features)” that she had also applied in the 2021 assessment prepared for Waukesha County.

⁴ Dr. Niess's 2021 evaluation is not in the record of the instant case.

⁵ Zebrasky asserts in his appellant's brief that Dr. Niess offered a “common diagnosis of Major Depressive Disorder” regarding the offense in this case and the offenses in Waukesha County. We are unable to find support for that assertion in the record. We caution appellate counsel against making arguments that are not supported by the facts of record.

Although Dr. Niess concluded that she could not support any of Zebrasky's special pleas, Zebrasky asserts that her conclusions regarding his personality disorder are nonetheless significant to his claim for sentence credit. Specifically, he directs our attention to her opinion that:

an abnormality manifested only by repeated criminal conduct or otherwise antisocial conduct does not constitute a mental disease or defect. Mr. Zebrasky's personality dysfunction is manifested in a pattern of instability in interpersonal relationships, self-image and affects, marked impulsivity, poor anger control, irritability and aggression, consistent irresponsibility, lack of remorse, repeatedly engaging in criminal acts, and recurrent suicidal/homicidal threats.

(Quotation marks omitted.)

According to Zebrasky, the foregoing description of his personality dysfunction shows that Dr. Niess "considered Mr. Zebrasky's history of multiple aberrational acts, inclusive of those charged here, both in and out of custody, as a continuum of behavior manifestations of diagnosed mental illness and not discrete unconnected random criminal acts." He argues that his confinement in Waukesha County therefore arose from the same "continuum of misconduct" as his offenses in Milwaukee County, and this "continuum of misconduct constitutes ... a 'course of conduct,'" entitling him to credit against his Milwaukee County sentence for his time in Waukesha County custody.

We are not persuaded. The phrase "course of conduct" as used in WIS. STAT. § 973.155 is not so broad a concept as to embrace a "continuum of misconduct" reflecting a personality abnormality manifested by incorrigible criminality. Rather, as Wisconsin courts have long recognized, the phrase "course of conduct" is "construed more narrowly to mean 'the specific offense or acts embodied in the charge for which the defendant is being sentenced.'" *State v.*

Tuescher, 226 Wis. 2d 465, 471-72, 595 N.W.2d 443 (Ct. App. 1999) (some quotations marks omitted). A tangential or procedural connection is not sufficient. *State v. Johnson*, 2009 WI 57, ¶33, 318 Wis. 2d 21, 767 N.W.2d 207.

Here, Zebrasky fails to show that his crimes in Waukesha County after June 8, 2021, are “embodied” in the Milwaukee County charge for which the Milwaukee County circuit court imposed sentence. See *Tuesher*, 226 Wis. 2d at 471. He shows only that his personality includes a tendency to commit crimes. That unfortunate trait does not earn him sentence credit in Milwaukee County for the time he served for criminal acts in Waukesha County. “[O]ne sentence does not arise from the same course of conduct as another sentence unless the two sentences are based on the same specific acts.”⁶ *Id.* at 475.

Zebrasky was released from Milwaukee County custody on June 8, 2021, after signing a signature bond in the instant matter. As of that date, he was no longer in custody in connection with the Milwaukee County case. See *State v. Beiersdorf*, 208 Wis. 2d 492, 498-99, 561 N.W.2d 749 (Ct. App. 1997). Thereafter, he committed additional crimes in Waukesha County and was

⁶ Determinations of sentence credit in circumstances similar to those here are familiar to Wisconsin courts considering whether a connection exists between custody and a charge:

assume a person is released on personal recognizance on one charge but later is arrested on a different charge and remains in custody as a result of an inability to post cash bail. When sentenced, the person is entitled to credit only on the sentence for the charge on which he was held in custody. This is true even if the charge on which he was in custody was bail jumping based on a violation of the conditions of the personal recognizance bond in the other case.

WIS JI—CRIMINAL SM-34A, § IV B.(1). Thus, as the example reflects, custody for a subsequent incident of misconduct does not alone earn the offender credit against the sentence for the original charge, even if the original charge and the subsequent misconduct are tangentially related.

held in custody there as a consequence, but his tendency to commit crimes does not establish that the crimes he committed in Waukesha County arose from the same course of conduct as the crimes he committed earlier in Milwaukee County. Because Zebrasky failed to carry his burden to show that his time in Waukesha County custody was in connection with the course of conduct for which he was sentenced in Milwaukee County, the circuit court properly denied him the sentence credit at issue. Therefore, we affirm.

IT IS ORDERED that the circuit court judgment and order are 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