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DISTRICT I

November 19, 2024

To:

Hon. Paul R. Van Grunsven
Circuit Court Judge
Electronic Notice

John D. Flynn
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Jesus D. Correa 519060
Waupun Correctional Institution
P.O. Box 351
Waupun, WI 53963-0351

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

2023AP1252-CR

State of Wisconsin v. Jesus D. Correa (L.C. # 2021CF4684)

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).

Jesus D. Correa, *pro se*, contends that the circuit court erred in denying his motion to suppress evidence as well as his motion requesting 498 days of sentencing 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 (2021-22).¹

On November 12, 2021, the State charged Correa with one count of possession of a firearm by a felon, one count of possession with intent to deliver between three and ten grams of

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

heroin with the use of a dangerous weapon, one count of possession with intent to deliver between 1,000 and 2,500 grams of THC with the use of a dangerous weapon. According to the complaint, Milwaukee police executed a search warrant at Correa's residence and found approximately 2,333 grams of marijuana, 3.36 grams of heroin, about \$6,000 in cash, and two firearms. Correa moved to suppress the evidence, arguing that it was obtained as a result of an invalid search warrant. The circuit court denied the motion. Correa ultimately pled guilty to the charges. The circuit court sentenced Correa to forty-five months of initial confinement and forty-five months of extended supervision on each count to run concurrent to each other and any other sentence.

Following sentencing, Correa moved for sentence modification seeking 498 days of sentence credit. Correa argued that he was entitled to sentence credit from the date of his arrest (November 10, 2021) to the date of his sentencing (March 23, 2023). The circuit court granted Correa 105 days of credit, noting that while Correa was arrested on November 10, 2021, he was revoked from extended supervision on an underlying case on February 23, 2022. The court found that from February 23, 2022, onward, Correa was serving a sentence in his underlying case. This appeal follows.

On appeal, Correa contends that the circuit court erroneously denied his suppression motion and again contends that he is entitled to 498 days of sentence credit. As to the suppression motion, we note that is not clear from the Notice of Appeal that Correa intended to appeal the judgment of conviction, including the non-final pretrial order denying his motion to suppress evidence. For purposes of this appeal, we assume jurisdiction over the non-final pretrial motion. However, we do not address the merits of Correa's argument as Correa failed to provide this court with a transcript of the suppression hearing. As the appellant, Correa was

responsible for ensuring that all relevant transcripts are in the record. *See* WIS. STAT. RULE 809.11(4). When an appellant fails to ensure a complete record, our review is limited to the portions of the record available to us. *See Ryde v. Dane County Dep’t of Soc. Servs.*, 76 Wis. 2d 558, 563, 251 N.W.2d 791 (1977). Thus, “we must assume that the missing material supports the [circuit] court’s ruling.” *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993). Without the trial transcript, this court must assume the circuit court properly exercised its discretion when denying the suppression motion.

Whether Correa is entitled to additional sentence credit under the facts of this case presents a question of law that we review independently. *See State v. Abbott*, 207 Wis. 2d 624, 628, 558 N.W.2d 927 (Ct. App. 1996). The sentence credit statute provides that 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). In deciding whether an offender is entitled to a particular amount of credit under the statute, a court must determine: (1) whether the defendant was “in custody” during the relevant time period; and (2) whether that custody was “in connection with the course of conduct for which sentence was imposed.” *State v. Johnson*, 2009 WI 57, ¶27, 318 Wis. 2d 21, 767 N.W.2d 207 (citation omitted).

In his motion for sentence modification, Correa argued that he was entitled to additional sentencing credit because the circuit court imposed concurrent sentences. Correa reiterates that argument on appeal. WISCONSIN STAT. § 973.155 does not require “that credit applied toward one sentence also be applied toward a second sentence if the basis for applying the same credit to both sentences is merely that the sentences are concurrent and are imposed at the same time.” *Johnson*, 318 Wis. 2d 21, ¶76. We therefore reject Correa’s argument.

Correa also contends that he is entitled to sentencing credit because the conduct at issue is a part of the same course of conduct as the case on which he was revoked. We need not address the merits of this argument as Correa has raised it for the first time on appeal. *See State v. Reese*, 2014 WI App 27, ¶14 n.2, 353 Wis. 2d 266, 844 N.W.2d 396 (“This court need not address arguments that are raised for the first time on appeal, or, if raised below, raised for the first time in the reply brief.”).

For all the foregoing reasons,

IT IS ORDERED that the 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