

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 11, 2012**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

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

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2011AP1838-CR  
2011AP1839-CR**

**Cir. Ct. Nos. 2005CF2419  
2006CF4804**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DAVID D. RAMAGE,**

**DEFENDANT-APPELLANT.**

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APPEALS from orders of the circuit court for Milwaukee County:  
DENNIS R. CIMPL, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. In these consolidated matters, David D. Ramage, *pro se*, appeals from orders entered on May 10, 2011, that granted him 591 days of

sentence credit in Milwaukee County case No. 2005CF2419, but denied him 529 days of sentence credit in Milwaukee County case No. 2006CF4804.<sup>1</sup> He also appeals from an order entered in case No. 2006CF4804 on June 3, 2011, denying his motion to reconsider the sentence credit determination.<sup>2</sup> Because the circuit court properly concluded that Ramage’s custody during the time at issue was not in connection with the crime charged in case No. 2006CF4804, we affirm.

## BACKGROUND

¶2 The histories of two prosecutions are relevant to these consolidated appeals. For purposes of Ramage’s claim for sentence credit, the facts comprising those histories are not disputed.

¶3 On April 26, 2005, police arrested Ramage on suspicion that he possessed child pornography. The State ultimately charged him in Milwaukee County case No. 2005CF2419 with eight counts of possessing child pornography

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<sup>1</sup> On May 10, 2011, the circuit court entered the same order in both Milwaukee County case No. 2005CF2419, which underlies appeal No. 2012AP1838, and in Milwaukee County case No. 2006CF4804, which underlies appeal No. 2012AP1839.

<sup>2</sup> The notices of appeal that Ramage filed in these matters on August 8, 2011, state that he appeals from the order of June 3, 2011. The notices further state, however, that he challenges an order denying sentence credit. We construe the notices of appeal as sufficient to bring before the court both the May 10, 2011 order denying sentence credit and the June 3, 2011 order denying reconsideration in case No. 2006CF4804. See *Ryner v. Sauk Cnty.*, 118 Wis. 2d 324, 326, 348 N.W.2d 588 (Ct. App. 1984) (notice of appeal is sufficient if it leaves no doubt as to what is appealed). We add, however, that we perceive no basis on which Ramage is aggrieved by the orders as they pertain to case No. 2005CF2419. “A party must be ‘adversely affected in some appreciable manner’ before he or she may appeal.” *Town of Menasha v. Bastian*, 178 Wis. 2d 191, 194-95, 503 N.W.2d 382 (Ct. App. 1993) (citation omitted). Because Ramage seeks no relief in case No. 2005CF2419, however, the question of whether this court has jurisdiction over appeal No. 2012AP1838 is academic, and we therefore discuss it no further. See *Markwardt v. Zurich Am. Ins. Co.*, 2006 WI App 200, ¶30, 296 Wis. 2d 512, 724 N.W.2d 669.

and one count each of resisting arrest and failing to register as a sex offender. He was unable to post bail.

¶4 On September 11, 2006, while Ramage remained in pretrial custody awaiting resolution of the charges in case No. 2005CF2419, the State charged Ramage in Milwaukee County case No. 2006CF4804, with conspiracy to commit first-degree intentional homicide. The State alleged that Ramage tried to have someone kill a witness against him in case No. 2005CF2419. Again, Ramage did not post the bail set by the circuit court.

¶5 Both cases pending against Ramage moved toward resolution in October 2006. In case No. 2005CF2419, Ramage entered *Alford* pleas<sup>3</sup> to eight counts of possessing child pornography, and the circuit court dismissed the other two counts alleged in the information. In case No. 2006CF4804, Ramage entered a no-contest plea to an amended charge of solicitation to commit first-degree intentional homicide.

¶6 On December 8, 2006, the circuit court sentenced Ramage in the homicide matter, case No. 2006CF4804, to twelve-and-one-half years of imprisonment. The circuit court also awarded him ninety days of presentence credit for his time in custody after September 11, 2006, awaiting disposition of the matter.<sup>4</sup>

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<sup>3</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970) (permitting a defendant to accept conviction while protesting innocence).

<sup>4</sup> The State notes that the period between September 11, 2006, and December 8, 2006, is less than ninety days. The State, however, did not challenge the sentence credit awarded to Ramage in Milwaukee County case No. 2006CF4804, and the calculation discrepancy, which appears to benefit Ramage, is not material to the issues presented on appeal.

¶7 For reasons that are not material here, the circuit court did not pronounce a final sentence in case No. 2005CF2419, the child pornography matter, until October 8, 2008. At that time, the circuit court imposed eight two-year terms of imprisonment and ordered that Ramage serve each sentence concurrently with any other sentence imposed at the same time or previously. The circuit court did not award Ramage any sentence credit against the eight concurrent sentences.

¶8 In May 2011, Ramage moved for sentence credit in the homicide case, No. 2006CF4804. He claimed that he should receive credit against his sentence in that matter for all the time he spent in custody beginning on April 26, 2005, the date on which he was arrested for possessing child pornography. The circuit court denied the claim. Instead, the circuit court awarded Ramage 591 days of sentence credit in case No. 2005CF2419, representing the time he spent in custody from the date of his arrest on April 26, 2005, for possessing child pornography until December 8, 2006, when he was sentenced in case No. 2006CF4804 for solicitation to commit homicide.

¶9 Ramage moved to reconsider. He did not challenge the circuit court's award of sentence credit in case No. 2005CF2419. He claimed, however, that the circuit court erred by denying him credit for his time in custody against not only his sentence in that case but also his sentence in case No. 2006CF4804. The circuit court denied the motion, and he appeals.

## **DISCUSSION**

¶10 Pursuant to statute, “[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) (2009-10).<sup>5</sup> Whether a defendant is entitled to sentence credit under § 973.155 is a question of law that we review independently of the circuit court. *State v. Lange*, 2003 WI App 2, ¶41, 259 Wis. 2d 774, 656 N.W.2d 480.

¶11 Where, as here, multiple sentences are imposed at different times, application of the statutory mandate for sentence credit can be complex. *See State v. Tuescher*, 226 Wis. 2d 465, 470-71, 595 N.W.2d 443 (Ct. App. 1999). Consequently, Wisconsin appellate courts have developed a body of case law applying WIS. STAT. § 973.155, in various circumstances.

¶12 On appeal, Ramage cites cases that he believes support the contention that he is entitled to sentence credit against each of his concurrent sentences for every day spent in custody in connection with any one of the sentences. He asserts: “when sentences are concurrent, as in the defendants [sic], time credit must be applied to the both [sic] cases.” Ramage misunderstands the authority that he cites. Although a defendant who receives concurrent sentences may, in some circumstances, receive credit against more than one sentence for each day spent in custody, such an award of dual credit is not automatic. *See State v. Johnson*, 2009 WI 57, ¶76, 318 Wis. 2d 21, 767 N.W.2d 207. A defendant who receives a concurrent sentence is entitled to credit against that sentence only for time in custody that is “in connection with the course of conduct giving rise to that sentence.” *Id.* (one set of quotation marks omitted).

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<sup>5</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶13 Also limiting a defendant’s entitlement to sentence credit is the well-settled rule that the phrase “course of conduct,” as used in WIS. STAT. § 973.155, does not refer broadly to a criminal episode. *See State ex rel. Thorson v. Schwarz*, 2004 WI 96, ¶¶30-31, 274 Wis. 2d 1, 681 N.W.2d 914. Rather, the phrase refers to “the specific ‘offense or acts’ embodied in the charge for which the defendant is being sentenced.” *See Tuescher*, 226 Wis. 2d at 471, 472.

¶14 Here, Ramage was in custody for more than a year awaiting resolution of the crimes alleged in case No. 2005CF2419—possessing child pornography, resisting arrest, and failing to register as a sex offender—before the State charged him in case No. 2006CF4804 with conspiracy to murder another person. Although the charges in the two cases may be broadly viewed as part of the same criminal episode because Ramage’s intended victim in case No. 2006CF4804 was a witness against him in case No. 2005CF2419, the records show that the homicide charge does not embody the same acts as those supporting the earlier allegations.

¶15 According to the criminal complaint in case No. 2005CF2419, Ramage possessed child pornography because he had pornographic images of children stored on his two computers, he resisted arrest because he gave a false name to police, and he failed to register as a sex offender because he did not comply with the Wisconsin sex offender registration requirements despite his conviction in Illinois for possessing child pornography. According to the criminal complaint and amended information in case No. 2006CF4804, Ramage solicited first-degree intentional homicide by advising another person to murder a witness against him. Plainly, the charges in case No. 2005CF2419 embody acts that are different from those embodied in case No. 2006CF4804. Therefore, the two cases do not involve the same course of conduct within the meaning of WIS. STAT.

§ 973.155. *See Tuescher*, 226 Wis. 2d at 479. Accordingly, Ramage was not in custody in connection with the course of conduct giving rise to his sentence in case No. 2006CF4804 until September 11, 2006, when the State charged him with a crime for his efforts to have someone killed.

¶16 Because Ramage was not in custody for acts embodied in the charge of solicitation to commit homicide until September 11, 2006, he is not entitled to credit in case No. 2006CF4804 for his time in custody before that date. Ramage has received full credit against his sentence in case No. 2006CF4804 for every day he spent in custody after the State filed a charge in that case on September 11, 2006. He is entitled to no more.<sup>6</sup>

*By the Court.*—Orders affirmed.

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

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<sup>6</sup> The orders of May 10, 2011, and June 3, 2011, that underlie these consolidated appeals address only issues related to sentence credit. Ramage's appellate briefs nonetheless discuss a variety of issues in addition to his request for sentence credit, and he appears to seek plea withdrawal in case No. 2006CF4804. Ramage may believe that he is entitled to pursue a challenge here to a February 4, 2011 order entered in case No. 2006CF4804. In that order, the circuit court rejected a motion that Ramage filed under WIS. STAT. § 974.06, collaterally attacking his conviction. Ramage's deadline to pursue an appeal from the February 4, 2011 order lapsed, however, when he did not file a notice of appeal within ninety days after entry of that order. *See* § 974.06(6) (stating that proceedings under that statute are civil in nature); § 974.06(7) (stating that appeals from adverse orders under the statute are taken as from a final judgment); WIS. STAT. § 808.04(1) (describing appellate deadlines in civil matters). Instead, Ramage filed a notice of appeal on August 8, 2011, stating that he challenged the circuit court's denial of sentence credit. That notice was insufficient to bring the final order of February 4, 2011, before this court. *See* WIS. STAT. RULE 809.10(4) (notices of appeal from final orders also bring before this court only prior nonfinal orders not previously appealed). Because Ramage did not timely commence an appeal from the order of February 4, 2011, we cannot review it. *See* RULE 809.10(1)(e) (timely notice of appeal necessary for this court to have jurisdiction); WIS. STAT. RULE 809.82(2)(b) (with exceptions not applicable here, deadline for filing notice of appeal may not be enlarged).

