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**DISTRICT III**

February 25, 2025

*To:*

Hon. Scott J. Nordstrand  
Circuit Court Judge  
Electronic Notice

Michael C. Sanders  
Electronic Notice

Kristi Severson  
Clerk of Circuit Court  
St. Croix County Courthouse  
Electronic Notice

Jeffrey Cole Erb  
Electronic Notice

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

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2023AP155-CR

State of Wisconsin v. Jeffrey Cole Erb (L. C. No. 2021CF309)

Before Stark, P.J., Hruz and Gill, JJ.

**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).**

Jeffrey Erb, pro se, appeals an order denying his motion to hold the Department of Corrections (DOC) in continuing contempt of court and to award him remedial damages of \$2,000 per day from the date he alleges the DOC was required to place him in the Substance Abuse Program (SAP) until the date he was placed in the program. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary

disposition. We reject Erb’s arguments and summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>1</sup>

In the underlying matter, St. Croix County case No. 2021CF309, Erb pleaded guilty to operating a motor vehicle while under the influence of an intoxicant (OWI), as a sixth offense. Out of a maximum possible ten-year sentence, with a presumptive minimum term of eighteen months of initial confinement, the circuit court imposed a four-year sentence, consisting of two years of initial confinement followed by two years of extended supervision. That sentence was to run consecutive to sentences that another court had imposed in St. Croix County case Nos. 2018CF582 and 2018CF781, when Erb’s extended supervision was revoked on his fourth and fifth OWI offenses. Both of those sentences after revocation were for two years of initial confinement followed by two years of extended supervision, concurrent with each other.

When discussing Erb’s eligibility for earned release through SAP, the circuit court stated that the program offers, “at least to some degree, the keys to the door after a period of time and when the [DOC] believes he’s eligible.” The court acknowledged that it had “become the practice of the courts based upon the accelerated participation in [SAP] to periodically limit when that eligibility begins, to manage how ... swiftly someone moves into the ... program.” However, based on its belief that it was best for Erb to have his rehabilitation happen while he was in custody, the court did not limit the start of Erb’s eligibility for SAP.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

Erb, by counsel, subsequently moved the circuit court in his revocation cases to vacate those sentences and resentence Erb in a way that allowed his revocation sentences to run concurrently with each other, but consecutively to the sentence in the present case. Erb sought this particular sentence structure so that he could serve his eighteen-month presumptive minimum at the beginning of his incarceration, thus permitting his eligibility for SAP to start once eighteen months of the two-year term were served. The court vacated and reimposed the sentences in the revocation cases as requested. In an order entered on June 7, 2022, the court in the present case removed language making Erb's sentence consecutive to the revocation sentences, and it directed that 159 days of sentence credit be applied in this matter. After the DOC questioned whether the appropriate amount of sentence credit had been applied, the court entered an order on July 29, 2022, that clarified the sentence structure and confirmed that Erb was entitled to 159 days of sentence credit in this case.

With the new sentence structure, the eighteen-month presumptive term of initial confinement (less 159 days of sentence credit) would be completed on September 25, 2022. The DOC placed Erb in SAP on October 25, 2022; he completed the program on January 13, 2023; and the circuit court ordered him released to extended supervision on January 23, 2023.

Before Erb was placed in SAP, he filed the underlying motion, asking the circuit court to hold the DOC in continuing contempt of court and to award remedial damages for the contempt. As grounds for his motion, Erb alleged that the DOC had disobeyed the court's orders by failing to place him in SAP immediately upon serving his presumptive minimum sentence. Erb claimed that the DOC barred his timely access to "restorative programming," thus causing his extended confinement. The court denied Erb's motion without a hearing, concluding that it lacked

competency to address the claim because Erb had not first pursued his claim through the inmate complaint review system. This appeal follows.

“Wisconsin defines contempt as ‘intentional ... [d]isobedience’ to an ‘order of a court.’” *Carney v. CNH Health & Welfare Plan*, 2007 WI App 205, ¶20, 305 Wis. 2d 443, 740 N.W.2d 625 (alteration in original; citation omitted); *see also* WIS. STAT. § 785.01(1)(b). “[T]he intent behind the contempt statute ... is to provide the court with a mechanism, or toolbox, to effect compliance with court orders.” *Frisch v. Henrichs*, 2007 WI 102, ¶82, 304 Wis. 2d 1, 736 N.W.2d 85.

Although we agree with the circuit court’s decision to deny Erb’s contempt motion, we rely on different grounds. *See State v. Baudhuin*, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987) (where the court’s decision is correct, we may affirm on grounds not utilized by that court). Even assuming the court had competency to decide the contempt motion, Erb did not allege facts upon which his requested relief could be granted. Erb claims that the DOC violated the court’s June 7, 2022 and July 29, 2022 orders.<sup>2</sup> As noted above, however, those orders merely ordered removal of language stating that Erb’s present sentence would run consecutively to his revocation sentences and confirmed that Erb was entitled to 159 days of sentence credit. In his contempt motion, Erb acknowledged that on September 8, 2022, the DOC informed him that his “sentence computation would be completed in accordance with the [circuit court’s] orders[,]” and on September 9, it “correctly completed [the] defendant’s ... sentence computation.”

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<sup>2</sup> Although Erb refers to orders dated June 3, 2022, and July 27, 2022, the orders were signed on those dates but entered on June 7, 2022, and July 29, 2022, respectively.

Therefore, even if Erb's allegations were true, he did not show a continuing contempt, which is necessary for an award of remedial sanctions. *See Frisch*, 304 Wis. 2d 1, ¶37.

To the extent Erb is suggesting that the DOC was in contempt for failing to place him in SAP immediately after he served eighteen months of initial confinement, less 159 days of sentence credit, the circuit court merely made Erb eligible for SAP without limiting when his eligibility would begin. Moreover, although the court determines a defendant's eligibility for SAP, it is the DOC that determines whether or when that placement occurs. *See State v. Schladweiler*, 2009 WI App 177, ¶10, 322 Wis. 2d 642, 777 N.W.2d 114 (recognizing that if the sentencing court makes a person eligible for the Challenge Incarceration Program (CIP), it is then up to the DOC to determine whether to place the person in the program), (*overruled on other grounds by State v. Harbor*, 2011 WI 28, ¶47 n.11, ¶52, 333 Wis. 2d 53, 797 N.W.2d 828.)<sup>3</sup> Erb has failed to establish a contempt, much less a continuing contempt, of court by the DOC.

In sum, the record conclusively demonstrates that Erb is not entitled to relief. Therefore, his motion was properly denied without a hearing.

Upon the foregoing,

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<sup>3</sup> Because the CIP and SAP provisions are "linked by nearly identical language ... they are related statutes whose meaning must be harmonized." *State v. White*, 2004 WI App 237, ¶10, 277 Wis. 2d 580, 690 N.W.2d 880. Therefore, a prior interpretation of the CIP provision and the overall purpose of the statute govern construction of the SAP statute. *Id.*

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*