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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT I**

February 10, 2026

*To:*

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Circuit Court Judge  
Electronic Notice

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

Jacob J. Wittwer  
Electronic Notice

Allen T. Armstrong Jr. 489817  
Oshkosh Correctional Institution  
P.O. Box 3310  
Oshkosh, WI 54903-3310

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

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2024AP400-CR	State of Wisconsin v. Allen T. Armstrong, Jr. (L.C. # 2019CF2280)
2024AP401-CR	State of Wisconsin v. Allen T. Armstrong, Jr. (L.C. # 2021CF4062)

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

Allen T. Armstrong, Jr. appeals from orders denying his motions for sentencing credit in two separate cases. Armstrong filed separate appeals; however, this court consolidated the appeals on its own motion due to the similarity in subject matter. Based upon our review of the briefs and records, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Upon review, we affirm the circuit court in both cases.

## **BACKGROUND**

We begin by noting that the facts in these cases are complicated as they involve numerous dates and multiple sentences. In May 2019, Armstrong was charged with one count of physical abuse of a child and one count of failure to act to prevent bodily harm to a child in Milwaukee County Circuit Court Case No. 2019CF2280 (“the 2019 case”). At the time, Armstrong was on extended supervision from a conviction in Milwaukee County Circuit Court Case No. 2014CF2173 (“the 2014 case”). The Department of Corrections (DOC) initiated revocation proceedings and Armstrong turned himself in to local authorities on July 17, 2019. He was released from custody and returned to extended supervision on September 30, 2019.

On January 18, 2020, Armstrong was taken into custody for another violation of extended supervision and the DOC initiated another revocation proceeding in the 2014 case. On May 11, 2020, the Division of Hearings and Appeals revoked Armstrong’s extended supervision and ordered him reconfined for eleven months and fifteen days. It granted Armstrong sentencing credit for the custodial periods of July 2019 to September 2019 and January 2020 to May 2020. Proceedings in the 2019 case remained pending.

After Armstrong was released from reconfinement, he remained on extended supervision for the 2014 case. However, in September 2021, Armstrong was arrested and charged with possession with intent to deliver between five and fifteen grams of cocaine and felony bail jumping in Milwaukee County Circuit Court Case No. 2021CF4062 (“the 2021 case”).

In February 2022, the DOC again revoked Armstrong’s supervision in the 2014 case and ordered him reconfined. Armstrong began serving his revocation sentence on February 9, 2022. In September 2022, a jury convicted Armstrong in the 2019 case. The circuit court sentenced

Armstrong to two years and six months of initial confinement and two years and six months of extended supervision with zero days of sentencing credit. The court ordered the sentence to run consecutive to Armstrong's revocation sentence. Proceedings in the 2021 case remained pending.

Armstrong completed his revocation sentence in the 2014 case on March 15, 2023, and began serving his sentence in the 2019 case on that day. On October 24, 2023, Armstrong was sentenced, after pleading guilty to the drug charge in the 2021 case, to three years of initial confinement and three years of extended supervision to run concurrent to the 2019 case. The court granted 140 days of credit in the 2021 case.

In November 2023, Armstrong, pro se, filed a motion requesting a total of 495 days of sentence credit in the 2019 case. He sought credit for his July 2019 to September 2019 custodial period and for the period of September 22, 2021 (the date he was taken into custody on the last revocation in the 2014 case), to his November 2, 2022 sentencing in the 2019 case. The postconviction court granted Armstrong one day of sentencing credit for a few hours he spent in custody on July 3, 2019. The court denied the remaining request for sentencing credit on the grounds that Armstrong had already received credit for those time periods against his revocation sentences in the 2014 case. Because Armstrong's sentence in the 2019 case was ordered to run consecutive to the revocation sentence, the court found that Armstrong was not entitled to dual credit.

Armstrong separately moved for additional sentencing credit in the 2021 case. As relevant to this appeal, he requested credit from March 15, 2023 (the date he began serving the 2019 sentence) to his October 24, 2023 sentencing in the 2021 case. The postconviction court denied

the motion, finding that Armstrong was not entitled to credit for time he was serving in an unrelated case (the 2019 case). Armstrong appeals the orders denying his motions for sentencing credit.

## DISCUSSION

### The 2019 Case

On appeal, Armstrong contends that he is entitled to sentence credit under WIS. STAT. § 973.155 (2023-24).<sup>1</sup> Specifically, he contends that he is entitled to sentencing credit for his July 2019 through September 2019 custodial period and his September 2021 to November 2022 custodial period. Whether the statute entitles a defendant to credit based on a given set of facts is a question of law that we review de novo. *See State v. Rohl*, 160 Wis. 2d 325, 329, 466 N.W.2d 208 (Ct. App. 1991).

WISCONSIN STAT. § 973.155(1)(a) provides that a convicted offender is entitled to sentence credit for all days spent in custody “in connection with the course of conduct for which sentence was imposed.” In *State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988), the Wisconsin Supreme Court read § 973.155 to provide that “custody credits should be applied in a mathematically linear fashion. The total time in custody should be credited on a day-for-day basis against the total days imposed[.]” *See Boettcher*, 144 Wis. 2d at 100. The *Boettcher* court held that double counting or “dual credit” for the same period of custody is unavailable on nonconcurrent sentences. *See id.* “The core idea of *Boettcher* is that ‘dual credit is not permitted’ where a defendant has already received credit against a sentence which has been, or will be,

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

separately served.” *State v. Jackson*, 2000 WI App 41, ¶19, 233 Wis. 2d 231, 607 N.W.2d 338 (quoting *Boettcher*, 144 Wis. 2d at 87).

Here, Armstrong’s custody for the periods of July 2019 to September 2019, and September 2021 to November 2022, were in connection with his 2014 revocation sentences. Armstrong received credit for those time periods. As stated, credit in relation to consecutive sentences is allowed only on one sentence. *Boettcher*, 144 Wis. 2d at 100. Because Armstrong’s sentence in the 2019 case was ordered consecutive to his revocation sentences, he is not entitled to the additional credit he seeks.

### **The 2021 Case**

In the postconviction court, Armstrong, by counsel, initially sought credit from March 15, 2023, the date he started serving the sentence in the 2019 case, to October 24, 2023, the date he was sentenced in the 2021 case. On appeal, however, Armstrong seeks credit for a different time period. Because Armstrong raises this new time period for the first time on appeal, we consider it to be a new argument that we will not address. *See State v. Champlain*, 2008 WI App 5, ¶17, 307 Wis. 2d 232, 744 N.W.2d 889 (stating that we do not consider issues raised for the first time on appeal). We also note that by changing the time period for which he initially sought credit, Armstrong has also abandoned the argument he raised in his postconviction motion. *See State v. Ledger*, 175 Wis. 2d 116, 135, 499 N.W.2d 198 (Ct. App. 1993) (“On appeal, issues raised but not briefed or argued are deemed abandoned.”). Accordingly, we will not address Armstrong’s argument regarding the 2021 case.

For the foregoing reasons, we affirm the orders denying Armstrong’s requests for sentencing credit.

Therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* 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 Appeal*

