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DISTRICT II

March 11, 2026

To:

Hon. Steven M. Cain
Circuit Court Judge
Electronic Notice

Milwaukee Secure Detention Facility
P.O. Box 05911
Milwaukee, WI 53205-0911

Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
Electronic Notice

Johnnie B. Rose, #174952
Milwaukee Secure Detention Facility
P.O. Box 05911
Milwaukee, WI 53205-0911

Sarah Catherine Geers
Electronic Notice

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

2025AP67-CR

State of Wisconsin v. Johnnie B. Rose (L.C. #2001CF3)

Before Neubauer, P.J., Gundrum, and Grogan, 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).

Johnnie B. Rose, pro se, appeals an order denying his motion for sentence credit and his petition for positive adjustment time. 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 (2023-24).¹ We affirm.

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

On December 19, 2000, Rose was arrested and held in custody on charges of armed robbery and felony substantial battery, both as a repeater. At the time of his arrest, Rose was on parole for a 1993 conviction. His parole was revoked on April 25, 2001. On the 1993 conviction, Rose was given sentence credit from “12/19/00 until his receipt at the institution.” Rose was paroled from the 1993 case on June 24, 2003.

A jury convicted Rose of the armed robbery and felony substantial battery charges underlying the present case. On March 13, 2006, the court sentenced Rose to consecutive sentences of sixteen years’ initial confinement and five years’ extended supervision on the armed robbery count and two years’ initial confinement and three years’ extended supervision on the battery count. The circuit court granted Rose 1,745 days of sentence credit—representing the time periods from June 24, 2003 to March 13, 2006 (997 days) and from January 21, 2001 to February 6, 2003 (748 days). In Rose’s direct appeal, he argued his March 2006 sentence was vindictive. We rejected that claim and affirmed the conviction. *State v. Rose*, No. 2007AP1217-CR, unpublished slip op., ¶1 (WI App July 16, 2008).

Following his direct appeal, Rose began repeatedly filing various postconviction motions in the circuit court. As relevant, in May 2011, Rose moved for sentence credit “from the date of [his] arrest until the last sentencing date of March 13, 2006.” He asserted that time period consisted of 1,911 days, acknowledged the court awarded him 1,745 days, and he asked for 166 additional days of sentence credit.

On June 13, 2011, the circuit court denied his motion. In a subsequent appeal of the court’s denial of Rose’s other postconviction motions, we observed “the circuit court denied the

May 2011 sentence credit motion in a June 13, 2011 order, and Rose did not appeal that order.” *State v. Rose*, No. 2011AP2102, unpublished op. and order at 8 (WI App Nov. 14, 2012).

Rose eventually served all of the initial confinement time in his bifurcated sentences for the underlying case, and he was released on extended supervision. On June 5, 2024, the Department of Corrections notified the circuit court that, on June 3, 2024, it revoked Rose from extended supervision and returned him to prison.

Rose then began filing multiple motions in the circuit court. As relevant to this appeal, Rose moved the court for additional sentence credit. He again asserted he was entitled to 1,911 days of sentence credit and, because the court only gave him 1,745 days, he should receive “166 days [of] additional sentence credit.” Rose also petitioned for positive adjustment time (“PAT”) under WIS. STAT. § 973.198.² The Department of Corrections wrote a letter to the court opining that Rose’s PAT petition was inappropriate because “the time served was on a previous incarceration for this case.”

On December 9, 2024, the circuit court held a hearing on Rose’s sentence-credit motion and his PAT petition. Following the hearing, the court entered a written order that stated it heard

² WISCONSIN STAT. § 973.198(1) provides:

When an inmate who is serving a sentence imposed under [WIS. STAT. §] 973.01 and who has earned positive adjustment time under [WIS. STAT. §] 302.113, 2009 stats., or under [WIS. STAT. §] 304.06, 2009 stats., has served the confinement portion of his or her sentence less positive adjustment time earned between October 1, 2009, and August 3, 2011, he or she may petition the sentencing court to adjust the sentence under this section, based on the number of days of positive adjustment time the inmate claims that he or she has earned.

argument on “the various motions” and “for those reasons stated on the record, [Rose’s] motions are DENIED.” Rose appeals.

On appeal, Rose argues he is entitled to 1,911 days of sentence credit. Because Rose already received 1,745 days of sentence credit, Rose asserts he is entitled to “166 additional days [of] time credit.” (Emphasis omitted.) He also argues the circuit court erred by denying his PAT petition.³

We begin by observing that Rose failed to obtain a transcript of the December 9, 2024 motion hearing. The court’s decision may have depended on findings of fact made at that hearing. When the transcript is not part of the record, we assume it supports every fact essential to the court’s decision. *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). We do so here, and we affirm the circuit court’s order.

In any event, and as to Rose’s request for an additional 166 days of sentence credit, we also affirm the circuit court’s denial based on *State v. Witkowski*, 163 Wis. 2d 985, 473 N.W.2d 512 (Ct. App. 1991). Under *Witkowski*, “[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *Id.* at 990; *see also State v. Crockett*, 2001 WI App 235, ¶15, 248 Wis. 2d 120, 635 N.W.2d 673 (“[B]ecause this claim was litigated previously, it cannot be asserted again here.”).

³ Rose’s notice of appeal indicates he is appealing the circuit court’s December 9, 2024 oral decision. The court memorialized its decision by written order dated January 16, 2025. *See* WIS. STAT. § 808.04(8) (“If the record discloses that the judgment or order appealed from was entered after the notice of appeal ... was filed, the notice shall be treated as filed after that entry and on the day of the entry.”).

Rose subsequently filed another PAT petition, which was denied by the circuit court on February 7, 2025. Although Rose references the February 7 order in his appellant’s brief, the February 7 order is outside the scope of this appeal, and we do not consider it.

Further, on the merits, the circuit court imposed consecutive sentences at the March 2006 sentencing. The Record also reflects that for a period of time after Rose’s arrest in this case but before sentencing, Rose was in custody serving his sentence from his 1993 conviction. Rose is not entitled to dual credit on consecutive sentences. *See State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988) (When a circuit court imposes a sentence consecutive to another sentence, the defendant is not entitled to receive dual sentence credit).

As to Rose’s PAT petition, we disagree with the State that Rose is “not eligible for positive adjustment time because he was convicted of a violent offense.” The State’s discussion omits the second clause of WIS. STAT. § 304.06(1)(bg)1⁴ as well as the entirety of subparagraph 2. Section 304.06(1)(bg)1 provides, in part, that: “A person sentenced under [WIS. STAT. §] 973.01 ... for a Class F to Class I felony *that is a violent offense*, as defined in [WIS. STAT. §] 301.048(2)(bm)1, may earn one day of positive adjustment time for every 3 days served[.]” (Emphasis added.) Similarly, § 304.06(1)(bg)2 provides, in part, that: “A person sentenced under [WIS. STAT. §] 973.01 for a Class C to Class E felony may earn one day of positive adjustment time for every 5.7 days served.”

Regardless, even if Rose was eligible for PAT (we specifically do not make that determination here), the ultimate decision to grant or deny a PAT petition is left to the circuit court’s discretion. *See State ex rel. Singh v. Kemper*, 2014 WI App 43, ¶23, 353 Wis. 2d 520, 846 N.W.2d 820, *aff’d in part on other grounds and rev’d in part on other grounds*, 2016 WI 67, 371 Wis. 2d 127, 883 N.W.2d 86. As stated previously, without a transcript of the December 9,

⁴ All references to WIS. STAT. § 304.06 are to the 2009-10 version.

2024 hearing, we assume the circuit court appropriately exercised its discretion by denying Rose's PAT petition. *See Austin*, 86 Wis. 2d at 641. Therefore,

IT IS ORDERED that the order of the circuit court is 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