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DISTRICT III

September 22, 2026

To:

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Circuit Court Judge
Electronic Notice

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Michele Wick
Clerk of Circuit Court
Douglas County Courthouse
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Dennis Schertz
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You are hereby notified that the Court has entered the following opinion and order:

2025AP2427-CR

State of Wisconsin v. David Briant Thompson
(L. C. No. 2022CF299)

Before Stark, P.J., Gill, and Graham, 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).

David Briant Thompson appeals from a judgment of conviction, arguing that he is entitled to 183 additional days of sentence 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 (2023-24).¹ We reject Thompson's argument that he is entitled to additional sentence credit and summarily affirm.

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

Thompson was arrested on August 5, 2022, and was subsequently charged with three drug-related offenses, each as a repeater. The circuit court imposed a cash bond, and Thompson remained in custody on that bond throughout the pendency of the case. Following a bench trial, the court found Thompson guilty of possession of a narcotic drug and possession of drug paraphernalia.

On March 1, 2024, the circuit court sentenced Thompson to two years' initial confinement followed by two years' extended supervision on the narcotic drug possession charge and six months in jail on the drug paraphernalia charge. The court made those sentences concurrent with each other but consecutive to any other sentence, including Thompson's sentence in a Minnesota case. The prosecutor argued that Thompson was entitled to 304 days of sentence credit, consisting of the 574 days between his arrest and the date of sentencing, minus 9 months (or 270 days). The prosecutor subtracted those nine months because, the prosecutor asserted, Thompson had already received credit for that time in his Minnesota case. The court awarded Thompson 304 days of credit.

Thompson subsequently moved to amend his judgment of conviction to award him a total of 574 days of sentence credit. Thompson argued that he "sat in the Douglas County Jail for 574 days from his arrest to the day prior to sentencing." He acknowledged that on February 9, 2023, he was "sanctioned ... to 9 months" in the Minnesota case. He argued, however, that "nothing in [Wis. STAT. §] 973.155 permits a deduction of ... credit on such a basis." The circuit court denied Thompson's motion by letter, citing *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988), for the proposition that dual credit is not permitted when two sentences are imposed consecutively to one another.

Thompson later filed a motion to reopen and a second motion asking the circuit court to amend his judgment of conviction to grant him a total of 574 days of sentence credit. Thompson argued that the court's reliance on *Boettcher* was misplaced because "[n]o previous court has claimed any of Mr. Thompson's 574 days of presentence credit," and "[t]he 9-month term that appears in his Minnesota court record does not refer to a proper sentence for purposes of credit calculations."

The circuit court held a hearing on Thompson's motions, during which Thompson's Minnesota probation agent testified that Thompson had received an imposed and stayed sentence of 60 months in the Minnesota case and was placed on probation for 3 years, with 1 year of conditional jail time. Thereafter, separate from the one year of conditional jail time, Thompson was ordered to serve nine months in jail as a sanction for probation violations that were not associated with the instant Wisconsin case. The agent explained that because Thompson "was already in the Douglas County Jail" awaiting trial on the charges in this case at the time the nine-month sanction was imposed, Thompson served the nine-month sanction in the Douglas County Jail. The agent further explained that if Thompson had served that sanction in a Minnesota jail, Thompson would have received "two-thirds time credit"—or "good time"—meaning that he would have served only 183 days of the 9-month sanction. However, because Thompson was in custody in the Douglas County Jail, he was not given good time credit and "ended up serving the full nine months."

The circuit court issued a written decision partially denying Thompson's request for additional sentence credit. The court cited *State v. Riley*, 175 Wis. 2d 214, 498 N.W.2d 884 (Ct. App. 1993), for the proposition that "a defendant is not entitled to credit on a new sentence

for a period of confinement attributable to an earlier order for confinement as a condition of probation.” The court then explained that Thompson was not

entitled to sentence credit for his entire period of confinement while housed in the Douglas County [J]ail simply because [the] 9[-]month confinement order in the Minnesota case may technically be a sanction, as opposed to a traditional sentence. This Court ordered that [Thompson’s] sentence in the case at bar was to run consecutive to his confinement in the Minnesota case. [Thompson] is not entitled to dual credit. Therefore, when determining sentence credit in the Wisconsin case, it was proper for this Court to reduce [Thompson’s] total time in custody in the Douglas County [J]ail by the number of days [Thompson] spent in custody serving his sanction ordered in the Minnesota case.

Nevertheless, the circuit court concluded that Thompson was entitled to 87 additional days of sentence credit, based on his probation agent’s testimony that, had he served his 9-month sanction in Minnesota, he would actually have been in custody for only 183 days, as opposed to the full 9 months. Accordingly, the court entered an amended judgment of conviction awarding Thompson a total of 391 days of sentence credit. Thompson now appeals.

“The application of the sentence credit statute, WIS. STAT. § 973.155, to a particular set of facts presents a question of law that we review independently.” *State v. Kontny*, 2020 WI App 30, ¶6, 392 Wis. 2d 311, 943 N.W.2d 923. Under the statute, a defendant “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.” Sec. 973.155(1)(a). “A defendant seeking sentence credit in Wisconsin has the burden of demonstrating both ‘custody’ and its connection with the course of conduct for which the Wisconsin sentence was imposed.” *State v. Carter*, 2010 WI 77, ¶11, 327 Wis. 2d 1, 785 N.W.2d 516.

Our supreme court has held that a defendant is not entitled to credit for time spent in custody awaiting trial and sentencing if, during that time, the defendant was also serving a sentence on an unrelated conviction. *See State v. Beets*, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985). The court explained that, in that situation, the imposition of a sentence in an unrelated case “severs” the connection between the defendant’s custody and the pending charges. *Id.* at 383.

In *Riley*, this court “extended the rationale of *Beets* to conditions of probation.” *State v. Abbott*, 207 Wis. 2d 624, 629, 558 N.W.2d 927 (Ct. App. 1996). The defendant in *Riley* argued that he was entitled to sentence credit for time that he spent in custody prior to his sentencing while he was also confined as a condition of his probation in an unrelated case. *Riley*, 175 Wis. 2d at 217. We rejected the defendant’s argument, concluding that it was foreclosed by *Beets*. *Riley*, 175 Wis. 2d at 219-221. We explained:

As *Beets* recognized, confinement resulting from prior criminal activity ““is a continuing consequence of the original conviction”” even though it might be concurrent with pre-sentence custody related to the crime against which pre-sentence credit is sought. *See Beets*, 124 Wis. 2d at 378, 369 N.W.2d at 384-385 (citation omitted). As such, it follows that [WIS. STAT. §] 973.155(1) does not authorize credit for a term of confinement ordered for that prior criminal activity irrespective of whether that confinement is a condition of probation or as the result of a sentence after revocation of probation.

Id. at 220-21. In other words, just as the imposition of a sentence severs the connection between a defendant’s custody and pending charges in an unrelated case, a defendant’s confinement to jail as a condition of probation also severs the connection between the defendant’s custody and any pending charges in an unrelated case.

The same is true here. While Thompson was in custody on the pending charges in this case, he was ordered to serve nine months in jail as a sanction for probation violations in his unrelated Minnesota case, and he served that sanction while in custody in the Douglas County Jail. Under the rationale of **Beets** and **Riley**, the imposition of the nine-month sanction severed the connection between Thompson’s custody and the charges in the instant case. As such, the circuit court properly rejected Thompson’s argument that he was entitled to a total of 574 days of sentence credit, representing the entire period from the date of his arrest until the date of sentencing.²

Thompson does not address **Riley** in his appellate briefs. As a result, he has conceded the correctness of the circuit court’s conclusion—and the State’s argument—that **Riley** bars his request for additional sentence credit. See **Schlieper v. DNR**, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (explaining that an appellant’s failure to address the grounds on which the circuit court ruled may be deemed a concession of the ruling’s validity); **Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.**, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (holding that unrefuted arguments may be deemed conceded).

² As noted above, although the circuit court determined that Thompson was not entitled to sentence credit for the “number of days [he] spent in custody serving his sanction ordered in the Minnesota case,” the court nevertheless awarded Thompson credit for 87 of those days, based on Thompson’s probation agent’s testimony that, had he served the sanction in Minnesota, he would have been in custody for only 183 days, as opposed to the full 9 months. On appeal, the State does not challenge the court’s decision to award Thompson 87 additional days of sentence credit. Accordingly, we need not—and do not—address whether the court’s decision to award Thompson credit for those 87 days was correct. Regardless of whether the court’s decision to award Thompson credit for those 87 days was correct, it does not affect our conclusion that the court correctly declined to award Thompson credit for the remaining 183 days that he spent in custody serving his sanction in the Minnesota case.

Instead of addressing **Riley**, Thompson argues that he is entitled to credit in this case for the entire nine-month period during which he was serving his Minnesota sanction because that period of custody “was never credited to [his] sentence in Minnesota (because he never served it), so it must be credited to him in this case.” We agree with the State, however, that whether Thompson received credit for the nine-month sanction against his Minnesota sentence is irrelevant. Regardless of whether Thompson received credit for the nine-month sanction in his Minnesota case, the imposition and service of the nine-month sanction severed the connection between Thompson’s custody and the pending charges in this case. Consequently, pursuant to **Riley**, Thompson is not entitled to additional sentence credit for the time that he spent in custody serving his sanction in the Minnesota case.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. 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