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DISTRICT I

June 18, 2024

To:

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Circuit Court Judge
Electronic Notice

Paul C. Dedinsky
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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Douglas C. McIntosh
Electronic Notice

Melvin Demetrius Tunstall 376509
Columbia Correctional Institution
P.O. Box 950
Portage, WI 53901-0950

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

2022AP2176-CRNM State of Wisconsin v. Melvin Demetrius Tunstall
(L.C. #2020CF1603)

Before Colón, J.¹

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).

Melvin Demetrius Tunstall appeals from a judgment, entered on his guilty pleas, convicting him on two counts of misdemeanor battery and one count of disorderly conduct, all as domestic abuse incidents. Appellate counsel, Douglas C. McIntosh, has filed a no-merit report, pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32. Tunstall was advised of his right to file a response, and he has done so. Upon this court's independent

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

review of the record as mandated by *Anders*, counsel's report, and Tunstall's response, we conclude there are no issues of arguable merit that could be pursued on appeal. We therefore summarily affirm the judgment.

On April 21, 2020, Tunstall's wife gave a statement to police. She told them that Tunstall had become angry with her, accusing her of cheating and yelling at her. He struck her in the head multiple times with a closed fist, causing pain. He also pushed her onto the bed, grabbed a pillow, and placed the pillow around her neck, then applied force that impaired her breathing. On April 24, 2020, the State filed a complaint charging Tunstall with one count of strangulation and suffocation, one count of misdemeanor battery, and one count of disorderly conduct, all as domestic abuse incidents.

Tunstall reached an agreement with the State. In exchange for his guilty pleas to three counts, the State would amend the felony strangulation charge to a second misdemeanor battery and limit its sentencing recommendation to "a sentence to the Court." On March 22, 2022, the circuit court accepted Tunstall's plea and sentenced him to nine months' imprisonment for each of the batteries, to be served consecutively to each other and to any other sentence. On the charge of disorderly conduct, the circuit court imposed a sentence of ninety days, to be served concurrently with the battery sentences and consecutive to any other sentence. Tunstall appeals.

The no-merit report addresses two potential issues: whether Tunstall's pleas were knowing, intelligent, and voluntary and whether the circuit court erroneously exercised its sentencing discretion. This court is satisfied that the no-merit report properly analyzes those issues as lacking arguable merit, and this court will not discuss them further.

At the time of these offenses, Tunstall was on extended supervision in a different case; that supervision was revoked on July 21, 2020. In his response, Tunstall asserts that because the charges in this case are what prompted his revocation, he is entitled to sentence credit in this case “from the time he was in custody on an extended supervision hold” on April 24, 2020,² until the time he was sentenced on March 22, 2022. Tunstall is entitled to credit, but that credit has already been awarded elsewhere, and Tunstall is not entitled to dual credit against this case.

“A convicted person should be given sentence credit for presentence incarceration for time spent in custody in connection with the course of conduct for which sentence was imposed.” *State v. Amos*, 153 Wis. 2d 257, 280, 450 N.W.2d 503 (Ct. App. 1989). This includes periods of time spent in custody on a supervision hold. *See* WIS. STAT. § 973.155(1)(b). “The total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences.” *State v. Boettcher*, 144 Wis. 2d 86, 100, 423 N.W.2d 533 (1988). When two consecutive sentences are imposed, jail credit for custody that is connected to both sentences reduces the term of confinement of the “first” sentence to be served. *See id.*

As noted, Tunstall claims sentence credit in this case from his arrest on April 24, 2020, through sentencing on March 22, 2022. The most credit Tunstall could claim, however, is for the period from his arrest on April 24 until he began serving his revocation sentence on October 30, 2020. *See State v. Davis*, 2017 WI App 55, ¶¶8-10, 377 Wis. 2d 678, 901 N.W.2d 488. This is

² In some places, Tunstall says his hold began on April 21, 2020. Regardless of whether that is the date on which the Department of Corrections issued a hold, there is no evidence that Tunstall was *in custody* on the hold until April 24, 2020. Both his booking photo and the revocation order note he was arrested on April 24, 2020.

because “the sentencing on one charge severs the connection between the custody and the pending charges.” *State v. Beets*, 124 Wis. 2d 372, 383, 369 N.W.2d 382 (1985).

Tunstall still is not entitled to that credit in this case, though. According to the revocation order attached to Tunstall’s response, the April to October credit was awarded against the revocation sentence. “[W]hile criminal defendants are entitled to sentence credit for incarceration factually connected to an offense, they are not entitled to credit already counted toward a separate and consecutive sentence.” *State v. Lira*, 2021 WI 81, ¶30, 399 Wis. 2d 419, 966 N.W.2d 605. Because Tunstall’s sentences in this case are consecutive to the revocation sentence, he is not entitled to duplicate credit in this case.³ See *Boettcher*, 144 Wis. 2d at 87. There is no arguable merit to a claim for sentence credit in this case.

Our independent review of the record reveals no other potential issues of arguable merit.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment is summarily affirmed. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Douglas C. McIntosh is relieved of further representation of Tunstall in this matter. See WIS. STAT. RULE 809.32(3).

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

³ The primary cases on which Tunstall relies in his response, *State v. Hintz*, 2007 WI App 113, ¶4, 300 Wis. 2d 583, 731 N.W.2d 646, and *State v. Presley*, 2006 WI App 82, ¶15, 292 Wis. 2d 734, 715 N.W.2d 713, involve defendants seeking sentence credit on their concurrent, not consecutive, sentences.

Samuel A. Christensen
Clerk of Court of Appeals