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PURSUANT TO THE WISCONSIN RULES OF APPELLATE PROCEDURE, THE FOLLOWING ITEMS ARE REPRODUCED IN THIS APPENDIX:

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STATE OF WISCONSIN CIRCUIT COURT ONEIDA COUNTY

STATE OF WISCONSIN,

Plaintiff

DEFENDANT'S MOTION FOR SENTENCE CREDIT

-vs-

Case No. 18CF72

Jacob L. Simon,

Defendant.

The defendant, appearing specially by his attorney and reserving his right to challenge the court's jurisdiction, moves the court for an order granting the defendant credit his sentence for all days spent in custody in connection with the course of conduct for which the sentence was imposed. The defendant brings this motion pursuant to section 973.155 of the Wisconsin Statutes, and *State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988), *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985), *State v. Gilbert*, 115 Wis. 2d 371, 340 N.W.2d 511 (1983), *State v. Nyborg*, 122 Wis. 2d 765, 364 N.W.2d 553 (Ct. App. 1985), and *State v. Demars*, 119 Wis. 2d 19, 349 N.W.2d 708 (Ct. App. 1984).

In support, the defendant cites the following facts:

According to the Complaint, the defendant was charged with burglary for conduct on February 5, 2018. According to defense counsel, page 16 of the sentencing transcript, the defendant was arrested on March 13, 2018 in Minnesota, and then revoked on August 6, 2018 from his extended supervision case. At that time, he received a 2 year 10 month and 5 day sentence.[1] Trial counsel's explanation is as follows:

> So he was revoked from his extended supervision on August 6th. He was arrested in Minnesota on March 13th, arrived in Oneida County on the 26th of March. If my math is correct, which it rarely is, I believe that's 133 days that would be credit on this particular case. The other days' credit would be as a result of his holds on his extended supervision and, of course, following August 6th he would be serving a sentence.

Notably, there does not appear to be any dispute that Simon was arrested in Minnesota for conduct connected to this case. Subsequently, Simon stayed at the Oneida County jail until his sentencing on November 13, 2018.[2] At sentencing, without hearing an objection, after imposing a concurrent sentence, the Court granted the requested 133 days of sentence credit.

Since then, it has come to Simon's attention that he is entitled to all days of credit from February 5, 2018 until sentencing November 13, 2018 since he was never actually transferred to the prison on his extended supervision revocation case until after sentencing on this case. As case law indicates:

> [W]hen an offender is revoked from supervision for committing a new crime and there is no reconfinement hearing on the revocation, and the offender is sentenced to concurrent terms on both the revocation sentence and the sentence for the new crime, the offender is entitled to sentence credit for custody served from the date of arrest to either the date of sentencing on the new crime or the date of transfer to prison, whichever occurs first.

State v. Larry Davis, 2017 WI App 55, P9, 377 Wis.2d 678, 901 N.W.2d 488.

Simon respectfully requests this court grant this motion for 248 days of sentence credit for the

[1] See Attachment A.
[2] See Attachment B.

time period of 3/13/2018 to 11/13/2018 without a hearing if there is no objection by the State within 5 days of receiving said motion.

Date: September 9, 2019

O'Connell Law Office
Attorneys for the Defendant

Timothy O'Connell

State Bar No. 1063957

O'Connell Law Office
403 S. Jefferson St.
P.O. Box 1625
Green Bay, WI 54305-1625
(920)-360-1811

Attachment A

DEPARTMENT OF CORRECTIONS
Office of the Secretary
DOC-1221 (Rev 10/2009)
AGENT # 60205

REVOCATION ORDER AND WARRANT

WISCONSIN

TO THE ATTENTION *Of Any Probation And Parole Agent, Peace Officer Or Any Officer* authorized to serve criminal process and to the **Warden / Superintendent or Other Person** in charge of any jail, correctional facility, penitentiary, lockup or other place of detention

In the matter of: ☒ ALL CASES REVOKED ☐ NOT ALL CASES REVOKED
☒ EXTENDED SUPERVISION CASES REVOKED

OFFENDER NAME	DATE OF BIRTH	DOC NUMBER
Simon, Jacob L.	03-17-81	371810 -A

Status Being Revoked	Date Offender Granted Status	Committing Court	County of Commitment	Court Case #	Return to Court Yes / No *
Ext Supervision	03-31-15	Branch 03	Marathon	03CF765	No

***Forward to circuit court a copy of the ALJ's decision or hearing waiver accompanied by this document (DOC-1221) for the sentencing after revocation hearing (sentence withheld cases only).**

The above-named was granted the status(es) noted above,
and, on December 5, 2017 the above-named violated the
conditions of such status(es) as determined by the Department

IN ACCORDANCE with the provisions of Chapters 302, 304, and/or Chapter 973 of the Wisconsin Statutes, it is now ordered that said probation(s), parole(s) mandatory release parole(s) and/or extended supervision(s) status(es) be and hereby is (are) revoked effective the date of this order

YOU ARE COMMANDED, in the name of the State of Wisconsin, and this shall be your authority to execute this order to apprehend and hold said offender for the following disposition

☒ Return to ☒ Dodge Correctional Institution ☐ Taycheedah Correctional Institution or ☐ Intensive Sanctions

For Old Law/New Law Parolees Only
☐ A Good Time Forfeiture/Reincarceration Hearing has been requested
☐ A Good Time Forfeiture/Reincarceration Hearing has been waived

For Extended Supervision Cases Only
☐ A Reconfinement Hearing has been requested
☒ A Reconfinement Hearing has been waived

☐ Return to the above-noted Wisconsin Court(s) for sentencing pursuant to §973.10(2)

☐ Return to the _____ County Jail

AND YOU, The Administrator of said institution, are authorized and directed to receive the above-named and keep him/her until discharged pursuant to law

WISCONSIN DEPARTMENT OF CORRECTIONS SEAL

Witness my hand and the Seal of the Wisconsin Department of Corrections at Madison, Wisconsin, this
10 day of August, 2018

Department of Corrections Secretary's Designee

Jail Credit Due 115

# Days	From	Thru
Holds	05-26-15	05-29-15 (3)
	06-02-15	06-16-15 (14)
	06-17-15	06-22-15 (5)
	04-17-16	07-21-16 (93)
	03-10-17	03-13-17 (3)
	08-25-17	08-29-17 (115)
	03-13-18	until received at the institution

Period of Reincarceration/Reconfinement
(Leave blank for Old Law/New Law/Extended Supervision Cases for which a Good Time Forfeiture/Reincarceration/Reconfinement Hearing has been requested)

Court Case #	Yrs	Mos	Days
03CF765	2	10	5

Amount of Good Time Forfeited
_____ Yrs _____ Mos _____ Days

Is Good Time To Be Earned On Forfeited Good Time?
☐ Yes ☐ No

COPY

BOOKING SEARCH
Print Date/Time: 8/13/2019 4:21:44 PM

In/Out	Booking Date/Time	Inmate	Arrest Date/Time	Days Served	Released Date/Time	Facility	Sched. Release Date/Time	Inmate Status
Out	03/25/2018 04:46:06	SIMON, JACOB LAWRENCE	03/24/2018 19:45:00	234	11/14/2018 16:59:52			PROBATION VIOLATION
Out	08/25/2017 21:29:01	SIMON, JACOB LAWRENCE	08/25/2017 12:30:00	4	08/29/2017 14:06:00			PROBATION VIOLATION
Out	06/14/2017 20:49:19	SIMON, JACOB LAWRENCE	06/14/2017 20:45:00	0	06/14/2017 21:46:26			UNSENTENCED

Total Rows: 3

104

ONEIDA COUNTY SHERIFFS OFFICE
ATTN:
2000 E WINNEBAGO ST
RHINELANDER, WI 54501-8863

Attachment B

FILED
10-04-2019
ONEIDA COUNTY
CLERK OF CIRCUIT
COURT
2018CF000072

STATE OF WISCONSIN CIRCUIT COURT ONEIDA COUNTY

State of Wisconsin,

Plaintiff,

vs.

State's Response to Defendant's Motion for Sentence Credit

Jacob L. Simon, (3/17/81)

Case Nos. 18CF72

Defendant.

The Defendant requests sentence credit of 248 days as opposed to the 133 days granted by the Court.[1] The Defendant appears to request the additional days based on two arguments, the State's response to each is as follows:

1. February 5, 2018 – service of the 18CF72 arrest warrant: The Defendant claims that the record is clear that the Defendant was arrested in Minnesota on March 13, 2018, for this offense. The State disagrees. At the time of sentencing, the parties stipulated to begin counting credit days on March 13, 2018, which the State believes is the date on which the Defendant began his extended supervision hold in Marathon County 03CF765. The State suggests that there is an absence of information on the record as to why the Defendant came to be in custody in Minnesota, and Defense Counsel infers from that absence that the above captioned case was the reason for his arrest in Minnesota. The State believes that in fact the Defendant came into custody for charges related to Ramsey County

[1] The Defendant's math is somewhat confusing. On page 1 of the Defendant's motion, he appears to request credit days from Feb. 5, 2018 through Nov. 13, 2018. However, in the conclusory paragraph he claims to request credit days from March 13, 2018 through November 13, 2018, and specifies this to be 248 days. The day counter at https://www.timeanddate.com counts March 13, 2018 through and inclusive of November 13, 2018, as 246 days.

(Minnesota) case 62SU CR-18-774, a case for which a warrant is still pending in Ramsey County. (See State's Attachment BB.) The Defendant was served with the Arrest Warrant in this Wisconsin case, Oneida County 18CF72, and was transported from Minnesota on or after the March 19, 2018, issuance of the 18CF72 warrant and his arrival at the Oneida County Jail, on March 25, 2018.[2] Given that the Defendant no longer stipulates to the counting of credit days as agreed to by the parties at sentencing, the State has requested records from Ramsey County, Minnesota, and the Oneida County, Wisconsin Sheriff's Department to clarify the exact date the Defendant was served with the 18CF72 Warrant. The State knows of no legal basis, nor does the Defendant provide such a basis, for the calculation of credit time beginning on February 5, 2018, the date of the crime, despite the fact that the Defendant was NOT in custody ANYWHERE until well into March of 2018. The State objects to any credit being granted prior to the service of the 18CF72 arrest warrant on the Defendant, and asks the Court to withhold judgment on the Defendant's Motion until documents can be received and filed with the Court that establish that date.

2. That State does not object to the Defendant's request for sentence credit from Aug. 6, 2018, through the Nov. 13, 2018 sentencing on 18CF72. The State's file notes indicate that Aug. 6, 2018 is the date the Defendant waived his resentencing hearing on 03CF765, unfortunately the State could not locate that date documented in the record, but concedes the 03CF765 Revocation Order and Warrant was signed by the Department of Corrections on August 10, 2018. (See Defendant's Attachment A) The

[2] See State's Attachment AA, the CCAP docket entry indicating the issuance of the 18CF72 warrant by the Honorable Judge Bloom on March 19, 2018. See Defendant's Attachment A, records of the Oneida County Jail, for the March 25, 2018 booking of the Defendant in the Oneida County Jail.

counting of the days between the Defendant's Aug.6, 2018, waiver and the Nov. 13, 2018 sentencing on 18CF72 is consistent with State v. Davis, 2017 WI App 55, 377 Wis.2d 678, 901 N.W.2d 488; and, State v. Beets, 124 Wis. 2d 372, 369 N.W.2d 382 (1985). The State believes that this addition of days between Aug. 6, 2018, and inclusive of Nov. 13, 2018, would increase the Court's original grant of credit days by 100 days, according to the day counter found at "https://www.timeanddate.com."

Dated Oct. 4, 2019

Mary M. Sowinski 1028147
Assistant District Attorney
Oneida County, Wisconsin

Oneida County Case Number 2018CF000072 State of Wisconsin vs. Jacob L. Simon

Case summary

Filing date	Case type	Case status	
03-01-2018	Criminal	Closed - Electronic filing	
Defendant date of birth	**Address**	**Branch ID**	**DA case number**
03-17-1981	1629 River Street, Rhinelander, WI 54501	2	2018ON000201

Charges

Printable version

Responsible official	Prosecuting agency	Prosecuting agency attorney
Bloom, Michael H.	District Attorney	Sowinski, Mary M, Ms.

Defendant owes the court: $226.00

Count no.	Statute	Description	Severity	Disposition
1	943.10(1m)(a)	Burglary-Building or Dwelling	Felony F	Guilty Due to No Contest Plea
Modifier:	939.05	Party to a Crime		

Defendant

Defendant name	Date of birth	Sex	Race
Simon, Jacob L.	03-17-1981	Male	Caucasian
Address (last updated 03-02-2018)			
1629 River Street, Rhinelander, WI 54501	**JUSTIS ID**	**Fingerprint ID**	

Attorneys

Attorney name	Entered	Withdrawn
Shawl, Richard John	03-30-2018	12-04-2018
O'Connell, Timothy Thomas	04-18-2019	

Also known as

Name	Type	Date of birth
Simon, Jacob Lawrence	Also known as	

Court record

AA 1

Date	Event	Court official	Court reporter	Amount
09-09-2019	Motion **Additional text:** for Sentence Credit			
08-14-2019	Order of Court of Appeals **Additional text:** extending time to file a postconviction motion			
08-08-2019	Motion **Additional text:** Motion to Extend Time for Filing Notice of Appeal or Postconviction Motion			
07-11-2019	Order of Court of Appeals **Additional text:** Court of Appeals Letter Order Extending			
07-03-2019	Motion **Additional text:** to extend time to file appeal or PCM			
05-16-2019	Order of Court of Appeals **Additional text:** Court of Appeals letter ordering Extension			
05-10-2019	Motion **Additional text:** to extend the time for appointing postconviction counsel and ordering transcripts.	Bloom, Michael H.		
05-01-2019	Transcript **Additional text:** Transcript of 4-2-18 Adjourned Initial Appearance			
05-01-2019	Transcript **Additional text:** Transcript of 4-9-18 Preliminary Hearing			
05-01-2019	Transcript			

AA 2

Date	Event	Court official	Court reporter	Amount
	Additional text:			
	Transcript of 5-14-18 Arraignment			
05-01-2019	Transcript			
	Additional text:			
	Transcript of 7-17-18 Pretrial Conference			
05-01-2019	Transcript			
	Additional text:			
	Transcript of 9-4-18 Pretrial Conference			
04-23-2019	Transcript			
	Additional text:			
	Transcript - Initial Appearance 3/26/18			
04-18-2019	Request for court record			
02-27-2019	Order	Bloom, Michael H.		
	Additional text:			
	Restitution Order			
02-27-2019	Other papers			
	Additional text:			
	Restitution summary			
12-04-2018	Notice			
	Additional text:			
	of completion of representation			
12-03-2018	Transcript			
	Additional text:			
	Pleas/Sentencing - 11/13/2018			
11-20-2018	Notice			
	Additional text:			
	of Hearings and Court Reporters			
11-19-2018	Notice of intent to pursue post-conviction relief			

AA 3

Date	Event	Court official	Court reporter	Amount
11-14-2018	Assessment Report			
11-14-2018	Judgment of conviction	Meyer, Jean		
11-13-2018	Other papers			
	Additional text:			
	Restitution Information			
11-13-2018	Letters/correspondence			
	Additional text:			
	provided to Court by defense counsel (Pages 3 -7 retained in illegible originals file)			
11-13-2018	Notice and acknowledge of def voting ineligibility			
11-13-2018	Written explanation of determinate sentence			
11-13-2018	Appeal rights/info on postconviction relief			
11-13-2018	Plea questionnaire, waiver of rights			
11-13-2018	Dispositional order/judgment	Bloom, Michael H.		
11-13-2018	Charge amended			
11-13-2018	Plea/sentencing hearing	Bloom, Michael H.	Penfield, Lynn	
	Additional text:			
	11:11 a.m. Defendant Jacob L. Simon in court with attorney Richard John Shawl. Defendant Jacob L. Simon in custody. Mary Sowinski appeared for the State of Wisconsin. Sowinski states agreement/Shawl concurs. State amends to a violation of 943.10(1m)(a), a class F felony - Granted. Plea questionnaire filed. Defendant enters no contest plea. Court reads on waiver of rights and tendering plea. Waiver free and voluntary. Court finds that a factual basis for the plea exists and finds defendant guilty. 11:21 a.m. Off record to allow Court to review letters provided by Attorney Shawl. On record - 11:28 a.m. Sowinski files Restitution Information. Sowinski/Shawl. 11:47 am. - Recess; On record - 11:48 a.m. - K.B. statement on sentencing. Defendant statement to Court. Court statement on sentencing. Court Sentence Wisconsin State Prison - 8 years CC to any current sentence Initial Confinement - 3 years Extended Supervision - 5 years Costs - To be collected by DOC as a courtesy DNA Sample The court informs defendant of right to request expungement of the DNA under Wis. Stat. 165.77(4). Restitution - $500 plus $50 surcharge for a total $550 Jail credit - 133 days Defendant is not appropriate for Challenge Incarceration or Substance Abuse Program Appeal rights given. WEDS given. NADVI given. Adj. 12:17 p.m.			
09-04-2018	Pre-trial conference	Bloom, Michael H.	Penfield, Lynn	

AA4

Date	Event	Court official	Court reporter	Amount
	Additional text:			
	11:35 a.m. Defendant Jacob L. Simon in court, in custody. Attorney Richard John Shawl in court. Mary Sowinski appeared for the State of Wisconsin. Based on stipulation of parties, court grants 60-day adjournment. Shawl requests that defendant remain in custody in Oneida County. Court would prefer defendant remain in Oneida County but will defer to DOC. DA to determine defendant's whereabouts and prepare Order for Transport for next hearing. Bail continued. Adj. 11:37 a.m. Plea/sentencing hearing scheduled for November 13, 2018 at 11:00 am.			
07-17-2018	Pre-trial conference	Bloom, Michael H.	Penfield, Lynn	
	Additional text:			
	1:56 p.m. Defendant Jacob L. Simon in court with attorney Richard John Shawl. Defendant Jacob L. Simon in custody. Mary Sowinski appeared for the State of Wisconsin. Sowinski statement to negotiations - requests adjournment. Bail continued. Adj. 2:01 p.m. Pre-trial conference scheduled for September 4, 2018 at 11:30 am.			
05-24-2018	Demand for Discovery - Prosecutor			
05-24-2018	Answer to demand for discovery and inspection			
	Additional text:			
	State's			
05-14-2018	Arraignment	Bloom, Michael H.	Penfield, Lynn	
	Additional text:			
	3:42 p.m. Defendant Jacob L. Simon in court via video with attorney Richard John Shawl. Defendant Jacob L. Simon in custody. Mary M. Sowinski appeared for the State of Wisconsin. Shawl waives further reading and enters not guilty pleas. Bail continued. Adj. 3:43 p.m. Pre-trial conference scheduled for July 17, 2018 at 01:30 pm.			
04-13-2018	Demand for Discovery and Inspection - Defendant			
04-11-2018	Information			
04-09-2018	Waiver of preliminary hearing	Bloom, Michael H.	Penfield, Lynn	

AA 5

Date	Event	Court official	Court reporter	Amount
	Additional text:			
	9:37 a.m. Defendant Jacob L. Simon in court with attorney Richard John Shawl. Defendant Jacob L. Simon in custody. Michael William Schiek appeared for the State of Wisconsin. Defendant waives preliminary hearing. Waiver free and voluntary. Court finds that probable cause exists and binds over. Parties request an arraignment date. Information to be filed within 30 days. Bail continued. Adj. 9:40 a.m. Arraignment scheduled for May 14, 2018 at 03:30 pm.			
04-02-2018	Video conferencing	Bloom, Michael H.	Penfield, Lynn	
04-02-2018	Adjourned initial appearance	Bloom, Michael H.	Penfield, Lynn	
	Additional text:			
	11:18 a.m. Defendant Jacob L. Simon in court via video with attorney Richard John Shawl. Mary M Sowinski appeared for the State of Wisconsin. In receipt of complaint, waive reading -set for preliminary hearing - Time limits NOT waived. Bail continued. Adj. 11:20 a.m. Preliminary hearing scheduled for April 9, 2018 at 09:30 am.			
04-02-2018	Public defender order appointing counsel			
03-26-2018	Warrant/Capias/Commitment canceled for Simon, Jacob L.			
	Additional text:			
	Notified Jack at ONSO - warrant quashed - appearance made (not sure warrant was sent to ONSO - Jack will check)			
03-26-2018	Cash bond set for Simon, Jacob L.	Hatfield, Deborah	Wood, Jean	$3,000.00
	Additional text:			
	No contact with J.V.D.			
03-26-2018	Video conferencing	Hatfield, Deborah	Wood, Jean	
03-26-2018	Initial appearance	Hatfield, Deborah	Wood, Jean	
	Additional text:			
	1:42 p.m. Defendant Jacob L. Simon in court, in custody. Mary M Sowinski appeared for the State of Wisconsin. In receipt of complaint, right to counsel - Sowinski statement to bail - Court sets bond. Adj. 1:46 p.m. Adjourned initial appearance scheduled for April 2, 2018 at 11:15 am.			
03-22-2018	Other papers			

AA/8

Date	Event	Court official	Court reporter	Amount
	Additional text:			
	Extradition Forecast			
03-19-2018	Arrest warrant issued for Simon, Jacob L.	Bloom, Michael H.		
03-12-2018	Arrest warrant authorized for Simon, Jacob L.	Bloom, Michael H.		
03-02-2018	Electronic Filing Notice Mailed			
03-02-2018	Case initiated by electronic filing			
03-01-2018	Complaint filed	Bloom, Michael H.		

Total receivables

Court assessments	Adjustments	Paid to the court	Probation/other agency amount	Balance due to court	Due date
$1,068.00	$0.00	$0.00	$842.00	$226.00	

AA 7

Skip to Main Content Log out My Account Search Menu New Criminal/Traffic/Petty Search Refine Search Back Location : All MNCIS Sites - Case Search Images Help

REGISTER OF ACTIONS

CASE NO. 62SU-CR-18-774

State of Minnesota vs JACOB LAWRENCE SIMON

Case Type: Crim/Traf Mandatory
Date Filed: 03/13/2018
Location: Ramsey Criminal/Traffic/Petty Suburban
Judicial Officer: Bastian, Gary W.

PARTY INFORMATION

Defendant SIMON, JACOB LAWRENCE
1629 River St.
Rhinelander, WI 54501

Male
DOB: 03/17/1981

Lead Attorneys
~~TERRANCE LYNDON HENDRICKS~~
~~Public Defender~~
~~651-757-1610(W)~~

Jurisdiction State of Minnesota
NONE

JOSEPH ANTHONY KELLY
651-224-3781(W)

CASE INFORMATION

Charges: SIMON, JACOB LAWRENCE	Statute	Level	Date	Disposition	Level of Sentence
1. Gross Misdemeanor False Information to Police	609.506.2	Gross Misdemeanor	03/12/2018		
2. Gross Misdemeanor False Information to Police	609.506.2	Gross Misdemeanor	03/12/2018		
3. Misdemeanor Obstructing Legal Process	609.50.1(2)	Misdemeanor	03/12/2018		
4. Misdemeanor Theft-Take/Use/Transfer Movable Prop-No Consent	609.52.2(a)(1)	Misdemeanor	03/12/2018		

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

03/13/2018 E-filed Comp-Order for Detention in Custody Index # 1
03/13/2018 First Appearance (1:35 PM) (Judicial Officer Mulrooney,Timothy ,)
Result: Held
03/13/2018 Interim Condition for SIMON, JACOB LAWRENCE
- Pay bail
$3,000.00
03/13/2018 Discovery Disclosure Index # 2
03/13/2018 Court Clerk Minutes Index # 3
03/13/2018 Pre-Trial Order Index # 4 (Judicial Officer: Mulrooney,Timothy ,)
03/13/2018 Bail Study Index # 5
03/13/2018 Order Granting Public Defender Index # 6 (Judicial Officer: Mulrooney,Timothy ,)
03/13/2018 Interim Condition for SIMON, JACOB LAWRENCE
- Released on own recognizance
03/15/2018 Demand or Request for Discovery Index # 7
03/15/2018 e-Service
terrance.hendricks@pubdef.state.mn.us
SIMON, JACOB LAWRENCE Served 03/15/2018
03/15/2018 e-Service
mnorder@kellyandlemmons.com
State of Minnesota Served 03/15/2018
03/15/2018 e-Service
cwhitcomb@kellyandlemmons.com
State of Minnesota Served 03/15/2018
03/15/2018 e-Service
chendricks@kellyandlemmons.com
State of Minnesota Served 03/15/2018
03/19/2018 Notice of Appearance Index # 8
03/24/2018 Released Own Recognizance
04/12/2018 Hearing (8:45 AM) (Judicial Officer Osby, Elona L.)
04/12/2018 Reset by Court to 04/12/2018
Result: Held
04/12/2018 Warrant Issued Index # 9
04/12/2018 Interim Condition for SIMON, JACOB LAWRENCE
- Pay bail
$500.00 *WARRANT ISSUED.*
04/12/2018 Court Clerk Minutes Index # 10
04/12/2018 Fail to Appear at a hearing

RB 1

State of Minnesota
County of Ramsey

District Court
2nd Judicial District

Prosecutor File No. 18006726
Court File No. 62SU-CR-18-774

State of Minnesota,
Plaintiff,

vs.

JACOB LAWRENCE SIMON DOB: 03/17/1981
1629 River Street
Rhinelander, WI 54501
Defendant.

COMPLAINT
Order of Detention

The Complainant submits this complaint to the Court and states that there is probable cause to believe Defendant committed the following offense(s):

COUNT I

Charge: Gross Misdemeanor False Information to Police
Minnesota Statute: 609.506.2
Maximum Sentence: 0-1 year imprisonment and/or 0-$3000 fine
Offense Level: Gross Misdemeanor

Offense Date (on or about): 03/12/2018

Control #(ICR#): 18006726

Charge Description: Whoever with intent to obstruct justice gives the name and date of birth of another person to a peace officer, as defined in subdivision 1, when the officer makes inquiries incident to a lawful investigatory stop or lawful arrest, or inquiries incident to executing any other duty imposed by law, is guilty of a gross misdemeanor.

COUNT II

Charge: Gross Misdemeanor False Information to Police
Minnesota Statute: 609.506.2
Maximum Sentence: 0-1 year imprisonment and/or 0-$3000 fine
Offense Level: Gross Misdemeanor

Offense Date (on or about): 03/12/2018

Control #(ICR#): 18006726

Charge Description: Whoever with intent to obstruct justice gives the name and date of birth of another person to a peace officer, as defined in subdivision 1, when the officer makes inquiries incident to a lawful investigatory stop or lawful arrest, or inquiries incident to executing any other duty imposed by law, is guilty of a gross misdemeanor.

COUNT III

A07

Charge: Misdemeanor Obstructing Legal Process
Minnesota Statute: 609.50.1(2)
Maximum Sentence: 0-90 days imprisonment and/or 0-$1000 fine
Offense Level: Misdemeanor

Offense Date (on or about): 03/12/2018

Control #(ICR#): 18006726

Charge Description: Whoever intentionally does any of the following may be sentenced as provided in subdivision 2: (2) obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties;

COUNT IV

Charge: Misdemeanor Theft-Take/Use/Transfer Movable Prop-No Consent
Minnesota Statute: 609.52.2(a)(1), with reference to: 609.52.3(5)
Maximum Sentence: 0-90 days imprisonment and/or 0-$1000 fine
Offense Level: Misdemeanor

Offense Date (on or about): 03/12/2018

Control #(ICR#): 18006726

Charge Description: (a) Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3: (1) intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property

STATEMENT OF PROBABLE CAUSE

On 03/12/18, Maplewood Police Officers were dispatched to a theft report at the Kohl's store located at 3001 White Bear Ave. in Maplewood, Ramsey County, MN. The officers identified the Suspect as he was exiling the store and attempted to stop him. The Suspect was apprehended by officers and the stolen itmes were found on his person. The value of the stolen items was less than $500.

The Suspect first identified himself as Timothy James Hunt, DOB: 06/15/84, a real person. A Minnesota driver's license with Hunt's name on it was also found on the Suspect. The Suspect then stated that his name was Patrick Earl Simon, DOB: 09/05/89, a real person. When the Suspect was booked and fingerprinted, it was discovered that he was Jacob Lawrence Simon, DOB: 03/17/81.

RB4

SIGNATURES AND APPROVALS

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

Complainant declares under penalty of perjury that everything stated in this document is true and correct. Minn. Stat. § 358.116; Minn. R. Crim. P. 2.01, subds. 1, 2.

Complainant	Julie Olson Officer 1830 E County Rd B Maplewood, MN 55109 Badge: 484	Electronically Signed: 03/13/2018 09:50 AM Ramsey County, Minnesota

Being authorized to prosecute the offenses charged, I approve this complaint.

Prosecuting Attorney	Martin Norder Maplewood City Attorney 223 Little Canada Road E Suite #200 Little Canada, MN 55117 (651) 224-3781	Electronically Signed: 03/13/2018 09:42 AM

ARC

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, *pending further proceedings. Defendant is therefore charged with the above-stated offense(s).*

☐ **SUMMONS**

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear on _____ ___, _____ at _____ AM/PM before the above-named court at 2050 White Bear Avenue, Maplewood, MN 55109 to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

☐ **WARRANT**

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

☐ ***Execute in MN Only*** ☐ ***Execute Nationwide*** ☐ ***Execute in Border States***

☒ **ORDER OF DETENTION**

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: $3,000.00
Conditions of Release:

This complaint, duly subscribed and sworn to or signed under penalty of perjury, is issued by the undersigned Judicial Officer as of the following date: March 13, 2018.

Judicial Officer	DeAnne M Hilgers Judge	Electronically Signed: 03/13/2018 10:16 AM

Sworn testimony has been given before the Judicial Officer by the following witnesses:

COUNTY OF RAMSEY
STATE OF MINNESOTA

State of Minnesota

Plaintiff

vs.

Jacob Lawrence Simon

Defendant

LAW ENFORCEMENT OFFICER RETURN OF SERVICE
I hereby Certify and Return that I have served a copy of this Order of Detention upon the Defendant herein named.

Signature of Authorized Service Agent:

RR/D

DEFENDANT FACT SHEET

Name:	Jacob Lawrence Simon
DOB:	03/17/1981
Address:	1629 River Street Rhinelander, WI 54501
Alias Names/DOB:	
SID:	
Height:	
Weight:	
Eye Color:	
Hair Color:	
Gender:	
Race:	
Fingerprints Required per Statute:	Yes
Fingerprint match to Criminal History Record:	No
Driver's License #:	
Alcohol Concentration:	

RBF

STATUTE AND OFFENSE GRID

Cnt Nbr	Statute Type	Offense Date(s)	Statute Nbrs and Descriptions	Offense Level	MOC	GOC	Controlling Agencies	Case Numbers
1	Charge	3/12/2018	609.506.2 Giving Peace Officer False Name-of Another Person	Gross Misdemeanor	X2200		MN0620400	18006726
2	Charge	3/12/2018	609.506.2 Giving Peace Officer False Name-of Another Person	Gross Misdemeanor	X2200		MN0620400	18006726
3	Charge	3/12/2018	609.50.1(2) Obstruct Legal Process-Interfere w/Peace Officer	Misdemeanor	X3080		MN0620400	18006726
4	Charge	3/12/2018	609.52.2(a)(1) Theft-Take/Use/Transfer Movable Prop-No Consent	Misdemeanor	TW999		MN0620400	18006726
	Penalty	3/12/2018	609.52.3(5) Theft-Value $500 or less	Misdemeanor	TW999		MN0620400	18006726

Certified to be a true and correct copy of the document filed with the court.
State of Minnesota, District Court, County of Ramsey
www.mncourts.gov/courtseal

Graham, Meghan
Oct 4 2019 2:24 PM

Attorney at Law

O'Connell Law Office
403 South Jefferson St., P. O. Box 1625
Green Bay, WI 54305-1625

Phone 920-360-1811 (Fax) 920-435-3744
E-Mail: timothyoconnell.law@gmail.com

October 8, 2019

Hon. Michael Bloom
1 Courthouse Square
PO BOX 400
Rhinelander, WI 54501

RE: State v. Jacob Simon; Case 18CF72

Dear Hon. Michael Bloom:

Mr. Simon is in receipt of the State's response to the defendant's motion for sentence credit. After reviewing the State's response, Mr. Simon would like to reply.

First, in Mr. Simon's motion, he did make a clerical mistake in stating he was seeking credit from February 5, 2018 to November 13, 2018; instead, the motion should have stated he was seeking credit from March 13, 2018 to November 13, 2018.

Second, in Mr. Simon's motion, he miscalculated sentence credit sought for 248 days. In recounting the number, if Mr. Simon is awarded the full amount he requests, he agrees with the State that the number should be 246.

Third, although the State initially did not contest that Simon was entitled to credit from March 13, 2018 to March 25, 2018, in reviewing the State's response, it appears to now have an objection to at least some of those days. According to the State, it believes Simon should get credit from the date of the service of the arrest warrant forward; thus, it is necessary to know when there was service of the arrest warrant.

In reply, Simon directs this court to *State v. Hintz*, 2007 WI App. 113. In that case, the defendant was on extended supervision for one crime when he was taken into custody on an extended supervision hold in part because he was the suspect in a new crime and in part for other reasons. *Id.* at P2-3, 9-10. Considering such, because he was in custody in part due to the conduct that resulted in the new conviction, he was entitled to credit on the sentence for the new conviction. *Id.* at P12. In Simon's case, he was in custody on March 13, 2018 due to a hold on his extended supervision (See Attachment A from motion for sentence credit), and the hold was at least in part due to his conduct on this case). (See Enclosed Attachment C).

For the above noted reasons as well as those stated in the defendant's motion, it is respectfully requested that the defendant be entitled to a total of 246 days of credit.

Sincerely,

Timothy O'Connell

DOC-414 (Rev. 2/2016) Administrative Code Chapters DOC 331 & 332

NOTICE OF VIOLATION, RECOMMENDED ACTION, STATEMENT OF HEARING RIGHTS AND RECEIPT

OFFENDER NAME	DOC #	AGENT NAME	AGENT #	ALL/NOT ALL CASES
JACOB SIMON	371810	WENDY McCORMACK	60205	NOT ALL CASE

Court Case # of all cases for which revocation is recommended :

CASE # 03CF765 CASE # _____ CASE # _____

CASE # _____ CASE # _____ CASE # _____

NOTICE OF VIOLATION The Division of Community Corrections has recommended revocation of your probation / parole / extended supervision based on the following allegations:

1. On or about 12/8/17 Jacob Simon failed to report to agent and his whereabouts and activities were unknown until his arrest on 3/12/18. This is in violation of Rules ST001 and ST017 of the Rules of Community Supervision signed by Simon on 4/1/15.
2. On or about 12/5/17 Jacob Simon took merchandise from a gas station located in Appleton, WI without paying for it. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.
3. On or about 12/17/17 Jacob Simon took merchandise from Kohl's Department located in Wausau, WI without paying for it. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.
4. On or about 2/5/18 Jacob Simon entered the residence located at 1311 Vincent Street Rhinelander, WI without permission. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.
5. On or about 2/5/18 Jacob Simon took items, including firearms, from the residence located at 1311 Vincent Street Rhinelander, WI without permission. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.
6. On or between 12/8/17 and 3/12/18 Jacob Simon left the State of Wisconsin without permission or a travel permit. This is in violation of Rule ST009 of the Rules of Community Supervision signed by Simon on 4/1/15.
7. On or between 12/8/17 and 3/12/18 Jacob Simon ingested Methamphetamine. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.
8. On or between 12/8/17 and 3/12/18 Jacob Simon ingested Heroin. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.
9. On or between 12/8/17 and 3/12/18 Jacob Simon ingested narcotic drugs without valid prescriptions. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.
10. On or between 12/8/17 and 3/12/18 Jacob Simon brought Methamphetamine from Minnesota to Wausau, WI. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.
11. On or about 3/12/18 Jacob Simon took merchandise from Kohl's Department located in Maplewood, Ramsey County Minnesota without paying for it. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.
12. On or about 3/12/18 Jacob Simon lied to law enforcement regarding his identity, providing them a false name. This is in violation of Rule ST001 of the Rules of Community Supervision signed by Simon on 4/1/15.

RIGHTS OF OFFENDER

A. ☐ You are entitled to a **PRELIMINARY REVOCATION HEARING,** to determine whether there is probable cause to believe that you violated a rule or condition of supervision. If probable cause is found, a determination will be made as to whether you will be held in custody pending a final revocation hearing. You may waive the preliminary revocation hearing.

At a preliminary revocation hearing, in addition to a qualified right to an attorney, **you have the following rights:**

- **To be present at the hearing;**
- **To present witnesses;**
- **To receive a written decision, stating the reasons for it, based on the evidence presented.**

☒ A preliminary hearing is not required, pursuant to Wis. Admin. Code DOC 331.05(2), for the following reason(s):

DISTRIBUTION: DOC-414 Original – DCC Offender Case File; Official Record – Social Service File, Chronological Section: Copy –Hearings and Appeals; Copy – Supervisor; Copy – Offender
DOC-414A: Original – DCC Offender Case File; Copy – Hearings and Appeals; Copy-Supervisor; Copy – Offender
DOC-414B: Original – Offender

Lynn Penfield
Court Reporter
(715)369-6214

Honorable Michael H. Bloom

Circuit Court, Branch II

Oneida County Courthouse
P.O. Box 400
Rhinelander, Wisconsin 54501

Jennifer Allen
Judicial Assistant
(715) 369-6200
FAX (715) 369-7820

Amy Franzen
Register in Probate
(715) 369-6159

Brenda Behrle
Clerk of Court
(715) 369-6120

October 17, 2019

Attorney Mary Sowinski
Oneida County District Attorney's Office
1 South Oneida Avenue
Rhinelander, WI 54501

Attorney Timothy O'Connell
O'Connell Law Office
403 South Jefferson Street
Green Bay, WI 54301

ONEIDA COUNTY
FILED
OCT 18 2019
CLERK OF CIRCUIT COURT

RE: State of Wisconsin v. Jacob L. Simon
Oneida County Case No.: 18-CF-72

Dear Counsel:

I have reviewed the defendant's Motion for Sentence Credit, which was filed in the above-referenced action on September 9, 2019, as well as the subsequent submissions of counsel.

I agree with Attorney O'Connell that, under the facts of this case, State v. Hintz entitles the defendant to sentence credit from the time that the defendant was first "in custody in connection with the course of conduct for which the sentence was imposed" through November 13, 2018. The warrant was first issued on March 19, 2018, so the custody could not have commenced before that date. Bond was set in this case on March 26, 2018, so credit must go back to at least that date. I hereby find that the defendant is entitled to sentence credit in this case from the day on which a detainer was lodged against the defendant in the State of Minnesota relative to the warrant issued in this case on March 19, 2018, through November 13, 2018.

I invite counsel to ascertain the underlying facts and submit a stipulation accordingly.

Sincerely,

Hon. Michael H. Bloom
Oneida County Circuit Court, Branch II

cc: Clerk of Oneida County Circuit Court

FILED
11-07-2019
ONEIDA COUNTY
CLERK OF CIRCUIT
COURT
2018CF000072

BY THE COURT:

DATE SIGNED: November 6, 2019

Electronically signed by Michael H. Bloom
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT ONEIDA COUNTY

STATE OF WISCONSIN,

Plaintiff,

STIPULATION AND ORDER FOR SENTENCE CREDIT

-vs-

Jacob L. Simon,

Defendant.

Case No. 18CF72

STIPULATION OF PARTIES

All parties listed below understand and agree to the following:

1) On September 9, 2019, the defendant filed a motion for sentence credit. In said motion, the defendant sought credit from 3/13/18 to 11/13/18. Since then, the court indicated it only believed the defendant should get credit on the date he was detained based upon the warrant from the current case forward. Further, the court encouraged the parties to figure out when the warrant was lodged on the defendant, and then to provide a stipulation and Order.
2) Considering the court's Order, the parties have reached an agreement that the defendant was detained on the warrant from this case on 3/24/2018. As a result, the parties stipulate the defendant should get credit from 3/24/18 to 11/13/18 in the amount of 234 days.
3) The parties are also of the understanding that Simon intends on appealing this case for additional credit from 3/13/18 to 3/24/18 based upon previous arguments raised.
4) Enclosed as part of this stipulation and Order is an Attachment which the parties used to reach the stipulation.

Defense Counsel — Date: 11/1/19

Timothy O'Connell
O'Connell Law
403 S. Jefferson St.
Green Bay, WI 54301

District Attorney — Date

Mary Sowinski
1 South Oneida Ave.
Rhinelander, WI 54501

ORDER BY COURT

This Court denies the defendant sentence credit from March 13, 2018 to March 24, 2018; however, based upon stipulation by the defendant and the prosecutor and all previously filed activity on said issue, this Court finds the defendant is entitled to sentence credit from March 24, 2018 to November 13, 2018, in the amount of 234 days. Consequently, this Court Orders the judgment of conviction shall so reflect 234 days of sentence credit.

Dated this _____ of_____, 2019.

BY THE COURT:

_____
Honorable Michael Bloom
Circuit Judge

REGISTER OF ACTIONS
CASE NO. 62SU-CR-18-774

State of Minnesota vs JACOB LAWRENCE SIMON

Case Type: Crim/Traf Mandatory
Date Filed: 03/13/2018
Location: Ramsey Criminal/Traffic/Petty Suburban
Judicial Officer: Bastian, Gary W.

PARTY INFORMATION

Defendant	SIMON, JACOB LAWRENCE 1629 River St Rhinelander, WI 54501	Male DOB: 03/17/1991	Lead Attorneys ~~TERRANCE LYNDON HENDRICKS~~ *Public Defender* ~~651-757-1810(W)~~
Jurisdiction	State of Minnesota NONE		JOSEPH ANTHONY KELLY 651-224-3781(W)

CASE INFORMATION

Charges: SIMON, JACOB LAWRENCE	Statute	Level	Date	Disposition	Level of Sentence
1. Gross Misdemeanor False Information to Police	609.506.2	Gross Misdemeanor	03/12/2018		
2. Gross Misdemeanor False Information to Police	609.506.2	Gross Misdemeanor	03/12/2018		
3. Misdemeanor Obstructing Legal Process	609.50.1(2)	Misdemeanor	03/12/2018		
4. Misdemeanor Theft-Take/Use/Transfer Movable Prop-No Consent	609.52.2(a)(1)	Misdemeanor	03/12/2018		

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

03/13/2018 E-filed Comp-Order for Detention in Custody Index # 1
03/13/2018 First Appearance (1:35 PM) (Judicial Officer Mulrooney, Timothy ,)
Result: Held
03/13/2018 Interim Condition for SIMON, JACOB LAWRENCE
- Pay bail
$3,000.00
03/13/2018 Discovery Disclosure Index # 2
03/13/2018 Court Clerk Minutes Index # 3
03/13/2018 Pre-Trial Order Index # 4 (Judicial Officer: Mulrooney, Timothy ,)
03/13/2018 Bail Study Index # 5
03/13/2018 Order Granting Public Defender Index # 6 (Judicial Officer: Mulrooney, Timothy ,)
03/13/2018 Interim Condition for SIMON, JACOB LAWRENCE
- Released on own recognizance
03/15/2018 Demand or Request for Discovery Index # 7
03/15/2018 e-Service
terrance.hendricks@pubdef.state.mn.us
SIMON, JACOB LAWRENCE Served 03/15/2018
03/15/2018 e-Service
lmendes@kellyandlemmons.com
State of Minnesota Served 03/16/2018
03/16/2018 e-Service
cwhitcomb@kellyandlemmons.com
State of Minnesota Served 03/15/2018
03/16/2018 e-Service
chendricks@kellyandlemmons.com
State of Minnesota Served 03/15/2018
03/19/2018 Notice of Appearance Index # 8
03/24/2018 Released Own Recognizance
04/12/2018 Hearing (8:45 AM) (Judicial Officer Osiby, Elena L.)
04/12/2018 Reset by Court to 04/12/2018
Result: Held
04/12/2018 Warrant Issued Index # 9
04/12/2018 Interim Condition for SIMON, JACOB LAWRENCE
- Pay bail
$500.00 *WARRANT ISSUED.*
04/12/2018 Court Clerk Minutes Index # 10
04/12/2018 Fail to Appear at a hearing

RB 1

OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
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
Web Site: www.wicourts.gov

DISTRICT III

May 11, 2021

To:

Hon. Michael H. Bloom
Circuit Court Judge
1 Courthouse Square
Rhinelander, WI 54501

Michael W. Schiek
District Attorney
P.O. Box 400
Rhinelander, WI 54501

Brenda Behrle
Clerk of Circuit Court
Oneida County Courthouse
1 Courthouse Square, P.O. Box 400
Rhinelander, WI 54501

Jacob J. Wittwer
Attorney General's Office
Post Office Box 7857
Madison, WI 53707-7857

Timothy T. O'Connell
O'Connell Law Office
403 S. Jefferson St.
Green Bay, WI 54301

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

2019AP2165-CR State of Wisconsin v. Jacob L. Simon (L. C. No. 2018CF72)

Before Stark, P.J., Hruz and Seidl, 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).

This appeal involves Jacob Simon's contention that he is entitled to an additional eleven 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 (2019-20).[1] We summarily affirm.

On February 5, 2018, Simon broke into a home in Rhinelander and stole a weapon. Simon was charged on March 1, 2018, in Oneida County case No. 2018CF72 with burglary and arming himself with a deadly weapon, both as a party to a crime. At the time, Simon was on extended supervision pursuant to a 2004 Marathon County conviction, but he was not immediately taken into custody.

On March 12, 2018, Simon was apprehended by law enforcement officers outside a Kohl's department store in Ramsey County, Minnesota, for retail theft. Simon falsely identified himself as "Timothy James Hunt," and then as "Patrick Earl Simon." Officers discovered his real name while booking him into the Ramsey County Jail. The State of Minnesota charged Simon with two counts of providing false information to police, and single counts each of theft and obstructing legal process.

On March 13, 2018, Simon's probation agent placed a hold on his extended supervision in the 2003 case, based in part on the burglary charged in the present case. On March 19, an Oneida County circuit court judge issued a warrant in the present case for Simon's arrest.

Simon was detained on the warrant on March 24, 2018. Simon was transported to Wisconsin and booked into the Oneida County Jail. He made his initial appearance in this case on March 26, 2018. Simon subsequently pleaded no contest to the burglary count and on

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

November 13, 2018, he was sentenced to three years' initial confinement and five years' extended supervision, with 133 days of sentence credit.

Simon filed a motion for additional sentence credit, contending he was entitled to credit for his custody from March 13, 2018, to November 13, 2018. He argued he was entitled to credit for his jail time in Minnesota because "there does not appear to be any dispute that Simon was arrested in Minnesota for conduct related to this case."

The State disputed that Simon's Minnesota arrest was for conduct related to this case. The circuit court determined that Simon was not entitled to credit for his days in Minnesota custody before the detainer based upon the Oneida County arrest warrant was lodged against him. The court invited the parties to stipulate as to when the detainer was lodged and the additional sentence credit to which Simon was entitled.

The parties stipulated that Simon was taken into custody on the warrant in the present case on March 24, 2018, thus entitling him to a total of 234 days of credit. The stipulation also stated that Simon intended to appeal from the circuit court's anticipated denial of credit for his Minnesota custody from March 13 to March 24. The court ordered sentence credit from March 24, 2018, to November 13, 2018, in the amount of 234 days.

A petitioner seeking additional credit after sentencing bears the burden of proving that (1) he or she was "in custody" during the period at issue, and (2) the custody was "in connection with the course of conduct for which the sentence was imposed." ***State v. Zahurones***, 2019 WI App 57, ¶13, 389 Wis. 2d 69, 934 N.W.2d 905. Custody on a probation hold that is due at least in part to the course of conduct for which sentence was imposed should be credited against that sentence. ***State v. Hintz***, 2007 WI App 113, ¶¶9-11, 300 Wis. 2d 583, 731 N.W.2d 646. The

presentence custody's connection with the sentence imposed must be factual—a mere procedural connection will not suffice. ***State v. Johnson***, 2009 WI 57, ¶33, 318 Wis. 2d 21, 767 N.W.2d207.

Simon argues that he is entitled to credit for presentence custody in Minnesota because on March 13, 2018, the Wisconsin Department of Corrections placed an extended supervision hold in his 2003 case, which was due in part to the Rhinelander burglary for which he was charged in the present case. To be entitled to credit in this case, however, Simon must demonstrate that Minnesota authorities held him, at least in part, for the Rhinelander burglary.

Simon has not met his burden. The record indicates that Ramsey County, Minnesota, authorities arrested Simon for a local theft outside a Minnesota Kohl's store on March 12, 2018, the day before the extended supervision hold was issued in Wisconsin. The record on appeal is void of any indication that Simon's arrest and custody in Minnesota were connected with the Rhinelander burglary.

Nevertheless, Simon argues his agent "must have learned of Simon's arrest, as she put a hold on Simon." Simon further contends—without citation to the evidence—that "the evidence shows the agent contacted Minnesota and put a hold on Simon." Simon appears to imply that Minnesota put the hold on Simon the day after his Minnesota arrest, i.e., March 13, 2018.

Simon's implication in this regard is speculative at best, and we will not resolve cases on the basis of speculation or theories about what may have occurred. *See, e.g.*, ***State v. Carter***, 2010 WI 77, ¶63 n.48, 327 Wis. 2d 1, 785 N.W.2d 516. There is no evidence that the Minnesota jail time was in any way connected to the Wisconsin case or to Simon's extended supervision hold. A hold was placed in Wisconsin, but there is no factual basis to conclude that Simon's

agent contacted Minnesota about it, nor that the Minnesota custody was based, even in part, on the existence of the Wisconsin extended supervision hold. While the Rhinelander burglary could have provided Minnesota authorities with another reason for holding Simon, that possibility does not satisfy Simon's burden to prove Minnesota actually held him for this reason—or that Minnesota authorities were even aware of his Wisconsin conduct or of the March 13 extended supervision hold.

Quite simply, there is no factual connection" between the Minnesota arrest and the Wisconsin conduct for which Simon was sentenced. Absent such a showing, Simon has failed to meet his burden of demonstrating that his Minnesota custody was in connection with the course of conduct for which the Wisconsin sentence was imposed. Simon is not entitled to sentence credit for this period of custody in Minnesota. Simon was detained on the warrant on March 24, 2018, and all of the evidence indicates that the circuit court correctly awarded sentence credit for the period of time from March 24, 2018 to the November 13, 2018 date of sentencing.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

STATE OF WISCONSIN,

Plaintiff,

-vs-

Jacob L. Simon,

Defendant.

Appeal No. 19AP2165 CR

DEFENDANT'S MOTION TO RECONSIDER

TO: Clerk of Court of Appeals, 110 E. Main Street, Ste. 215, Madison, WI 53703
Attorney General, PO BOX 7857, Madison, WI 53707

The defendant, appearing by his attorney Timothy O'Connell, hereby moves the Court pursuant to Wis. Stat. 809.24 to reconsider its decision denying the defendant's argument for sentence credit.

In support thereof, the defendant respectfully shows the following:

1. In Simon's appeal, the court learned the defendant was on extended supervision on Marathon County Case 03CF765. (Court's Decision and Order Dated May 11, 2021 at 2).
2. While on supervision, on February 5, 2018, the defendant committed the crime that resulted in the case before this Court, Oneida County Case 18CF72. *Id.*
3. On March 12, 2018, the defendant was arrested in Ramsey County Minnesota for retail theft. *Id.* He was then charged with two counts of providing false information to police, and single counts each of theft and obstructing legal process. *Id.*
4. On March 13, 2018, Simon's probation agent placed a hold on him for his extended supervision case for conduct occurring in Ramsey County as well the Oneida County Case. *Id.;* (33:2).
5. On March 19, 2018, an Oneida County judge issued an arrest warrant in the Oneida County Case. (Court's Decision and Order Dated May 11, 2021 at 2).
6. On March 24, 2018, the defendant was detained at least in part on the Oneida County arrest warrant, and on March 26, 2018, the defendant made his initial appearance. *Id.*

7. Ultimately, the defendant sought sentence credit for time served from March 13, 2018 to the date of his sentencing November 13, 2018. (Court's Decision and Order Dated May 11, 2021 at 3). However, the trial court judge partially denied the defendant's request without a hearing, and it awarded the defendant credit from March 24, 2018 to November 13, 2018. *Id.*
8. On Appeal, this Court indicated it was not convinced the defendant was entitled to sentence credit. (Court's Decision and Order Dated May 11, 2021 at 4-5). In support, it provided case law that a petitioner must show he was in custody during the time in issue and that the custody was in connection with the course of conduct for which the sentence was imposed. (Court's Decision and Order Dated May 11, 2021 at 3). Further, that custody on a probation hold that is due at least in part to the course of conduct for which sentence was imposed should be credited against that sentence. *Id.* This court then indicated the Minnesota records showed the defendant was held as a result of the Ramsey County arrest, and it was not persuaded that the agent's documentation that it put a hold on Simon showed the Ramsey County actually held him as a result of such hold. (Court's Decision and Order Dated May 11, 2021 at 4-5). As a result, this Court denied the defendant's argument. *Id.*
9. Considering the Court's reasoning, Simon respectfully directs this court to additional facts and requests it reconsider its decision.
10. First, in reviewing the Minnesota records, Simon does not contest that the documents show that he was arrested on March 12, 2018 for conduct on March 12, 2018, and then held in custody as a result. However, those same records indicate, on March 13, 2018, he was provided a cash bond, but the later entry from that day shows the court released him on his own recognizance. (36:4). For this reason, there would be no reason for Ramsey County to continue to hold him for conduct from March 12, 2018.
11. Further, as indicated above, the record shows the agent put a hold on Simon on March 13, 2018, at least in part for his conduct from Oneida County. It was Simon's understanding a probation hold meant the agent was actually holding Simon for a probation violation. For that reason, Simon pushed that argument. Nonetheless, this Court was not persuaded. In response, Simon directs this Court to the agent's own document indicating jail credit was due from March 13, 2018 forward. (31:3). This additional fact also shows the agent actually held Simon while in Minnesota since otherwise it would not make sense for the agent to expect the hold should warrant sentence credit.
12. To summarize, the records indicate Simon was arrested on March 12, 2018 in Minnesota for conduct in Ramsey County. Records also show on March 13, 2018, in Ramsey County, the court released the defendant on that case on his own recognizance. Further, the records show, Ramsey County

continued to hold him. In addition, the records show the agent indicated the agent put a hold on the defendant on March 13, 2018, and that the agent believed the defendant was entitled to credit as a result of the hold from March 13, 2018 forward. Finally, the defendant was ultimately brought back to Oneida County at least in part on a warrant from the lower court on Oneida County Case 18CF72 that was lodged against the defendant on March 24, 2018.

13. Considering the Ramsey County's entry indicating it had released Simon on March 13, 2018 from any hold on its case, and the agent's document filling in the gap why it would have continued to hold Simon, Simon respectfully requests this court reconsider its decision. Ultimately, Simon believes the evidence shows he was held in Ramsey County on March 13, 2018 because of his agent's hold, and that hold continued until sentencing even with the court's warrant that was ultimately lodged against him.
14. Second, even if this Court is still not persuaded, in light of the above information, Simon requests this court to remand this case back to the trial court so Simon can get an evidentiary hearing. At that time, he can subpoena the appropriate parties to confirm Ramsey County was merely holding him due to the agent's hold from March 13, 2018 until March 24, 2018. Here, as this Court is aware, the lower court ruled on the defendant's motion without holding a hearing.
15. Considering the above, it is respectfully recommend that this Court reconsider its Order denying the defendant's appeal, and either grant him the additional requested sentence credit, or otherwise to remand to the lower court for an evidentiary hearing.

WHEREFORE, the defendant prays that this Court reconsider its decision and overturn its decision denying the defendant's argument concerning sentence credit.

Date: May 27, 2021

O'Connell Law Office
Attorneys for the Defendant

Electronically signed by Timothy O'Connell
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DISTRICT III

June 2, 2021

To:

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

2019AP2165-CR State of Wisconsin v. Jacob L. Simon (L. C. No. 2018CF72)

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

Appellant, by counsel, moves for reconsideration of our decision dated May 11, 2021, regarding additional sentence credit. Nothing in the materials submitted causes us to reconsider our decision.

Therefore,

IT IS ORDERED that the motion for reconsideration is denied.

Sheila T. Reiff
Clerk of Court of Appeals

APPENDIX CERTIFICATION

I hereby certify that filed with this petition for review, either as a separate document or as part of this petition, is an appendix that complies with Wis. Stat. 809.62(2)(f), and that it contains, at a minimum: 1) a table of contents; 2) the decision and opinion of the court of appeals; 3) the findings or opinion of the trial court necessary for an understanding of petition; and, 4) any other portions of the record essential to an understanding of the issues raised.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

June 17, 2021

Signed:

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