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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT IV

Case No. 2013AP1345-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANDREW MATTHEW OBRIECHT,

Defendant-Appellant.

APPEAL FROM AN ORDER ENTERED IN THE
DANE COUNTY CIRCUIT COURT, THE
HONORABLE WILLIAM E. HANRAHAN
PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT ON ORAL ARGUMENT
AND PUBLICATION

This case can be resolved on the briefs by applying well-established legal principles to the facts; accordingly, the State requests neither oral argument nor publication.

STATEMENT OF THE CASE: FACTS AND PROCEDURAL HISTORY

For purposes of this appeal, this case is relatively straight-forward. Obrieht moved the circuit court for 107 days of sentence credit for time he spent in custody in 1998, 1999, and 2001 (267). The State did not object (269). The court granted Obrieht's motion, issuing a new judgment of conviction on February 5, 2013, reflecting the sentence credit (270).

On March 18, 2013, the Department of Corrections (DOC) wrote the circuit court a letter stating that DOC "interpret[s] that presentence credit granted while an offender is serving reincarceration does not reduce the reincarceration term, but rather reduces the parole time remaining on the sentence until its maximum discharge date" (271). DOC informed the court that it "applied the additional 107 days of credit to the overall sentence length in calculating Mr. Obrieht's sentence expiration date and [] utilized the credit listed on the Revocation Order and Warrant in calculating his release date" (271).

On March 20, 2013, Obrieht wrote the court requesting the court reject DOC's interpretation of the court's order and apply the 107 days credit to his confinement period (272). On April 8, 2013, Obrieht again wrote the court asking that the time be applied to his incarceration (273). On April 17, 2013, Obrieht once again wrote the circuit court to request relief (274).¹ On May 13, 2013, Obrieht wrote the court an additional letter (275). On May 15,

¹ Obrieht dated this letter March 17, 2013, but later clarified that this was a typographical error (275:1).

2013, the circuit court denied Obrieht's request (274:1).

Obrieht then returned to circuit court with a motion for reconsideration (276). On June 4, 2013, the circuit court issued its "Final Order on Defendant's Motions for Sentence Credit and Reconsideration" (277). The court found that DOC had "correctly calculated the maximum discharge date of the defendant based upon preincarceration credit earned by the defendant in accordance with § 302.11(7)(am)," and the court denied Obrieht relief (277:1).

Obrieht appeals the June 4, 2013 order (278).

ARGUMENT

THE CIRCUIT COURT PROPERLY DENIED OBRIECHT RELIEF.

As a preliminary matter, the State notes that Obrieht now appears to argue that he is entitled to 143 days of sentence credit even though he sought 107 days in circuit court. *Cf.* Obrieht's Br. at 2 to R. 267-1. Obrieht raised this issue to the circuit court in a letter after the court granted his motion for sentence credit (272:2). As such, the State does not believe the argument is properly before the court, but will address Obrieht's argument out of an abundance of caution.

- A. The circuit court properly denied Obrieht relief because the DOC interpretation of sentence credit in a revocation case is correct.

Obrieht contends that it is not fair for the sentence credit to be applied to his term of parole as opposed to his term of confinement. Obrieht's Br. at 1. Obrieht is mistaken.

When Obrieht's parole was revoked,² he was ordered by the Division of Hearings and Appeals (DHA) to return to prison (271). Wisconsin Stat. § 302.11(7)(am) allows DHA to return Obrieht to prison for an amount of time up to the remainder of his sentence. Although the record in this case does not reveal the term of confinement DHA determined Obrieht required, given that DOC has stated Obrieht would again be subject to future parole, DHA clearly did not order Obrieht's return to prison for the entire remainder of his sentence.

DHA ordered Obrieht's return to prison for a specific amount of time as authorized by Wis. Stat. § 302.11(7)(am). Under Wis. Stat. § 302.11(7)(b), Obrieht "shall be incarcerated for the entire period of time determined by" DHA (absent a situation not applicable here). Thus, the DOC's interpretation of the sentence credit owed to Obrieht is correct: Obrieht must serve the confinement period DHA determined was necessary in the revocation proceeding. The sentence credit is accorded to Obrieht off of his future parole time, which reduces his overall

² Records relating to Obrieht's revocation are not part of this appeal.

sentence, but not his reconfinement time as mandated by § 302.11(7)(b).

Put another way, DHA determined the amount of reconfinement that was appropriate when it revoked Obriecht's parole. At this point, that determination must be respected. The sentence credit reduces Obriecht's overall sentence, not his reconfinement period.

B. The circuit court properly denied Obriecht his untimely request for additional sentence credit.

After the circuit court issued its order and granted Obriecht 107 days of sentence credit, Obriecht wrote the court several letters, one of which argued that he was actually entitled to 143 days of credit, 36 more days of time than he had initially requested (272:2). As his excuse for not raising the issue with the court in his original sentence credit motion, Obriecht states that he thought DOC would give him the credit (272:2).

The circuit court appropriately declined to award Obriecht relief because Obriecht's request was not properly before the court. Obriecht's excuse that he assumed DOC would award him the credit is unpersuasive when Obriecht was before the circuit court precisely because DOC had not given him the relief he sought. *See* Wis. Stat. § 973.155(5). Moreover, if Obriecht believes he is entitled to additional time, and DOC rejects that request, he is free to move the circuit court in a new motion for sentence credit. *Id.*

The State doubts Obriecht could be successful in such a pursuit, however. Obriecht argues he is entitled to an additional 36 days of

sentence credit based on his reading of the statutes encompassing mandatory release, Wis. Stat. § 302.11. The State knows of no authority, and Obriecht has failed to present any, that requires sentence credit under Wis. Stat. § 973.155 to be calculated pursuant to § 302.11. In addition, as stated *supra*, Wis. Stat. § 302.11(7)(b) mandates “[a] parolee returned to prison for violation of the conditions of parole shall be incarcerated for the entire period of time ... The parolee is not subject to mandatory release[.]”

Obriecht is not entitled to the additional days of credit.

CONCLUSION

For the foregoing reasons, the State respectfully requests this court affirm the order of the circuit court.

Dated this 18th day of October, 2013.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,039 words.

Dated this 18th day of October, 2013.

Katherine D. Lloyd
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 18th day of October, 2013.

Katherine D. Lloyd
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