

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
Case No. 2015AP2137-CR

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

LAZERIC R. MAXEY,
Defendant-Appellant.

ON APPEAL FROM AN ORDER OF THE CIRCUIT COURT FOR KENOSHA
COUNTY, THE HONORABLE BRUCE E. SCHROEDER, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Did the trial court err in denying Maxey's request for
138 days of sentence credit?

**STATEMENT ON ORAL ARGUMENT AND
PUBLICATION**

Neither oral argument nor publication are requested.
The legal issues raised in this appeal are well-settled.

STATEMENT OF THE CASE AND FACTS

In Kenosha County Case No. 2011CF453, Maxey was
convicted of the felony offenses of Battery to a Law
Enforcement Officer in violation of Wis. Stat. § 940.20(2)
and Possession with Intent to Deliver Non-Narcotics in
violation of Wis. Stat. §961.41(1m)(b). (13:1; 30:2-3) He

was sentenced on November 30, 2011 to 1 ½ years initial confinement followed by 2 ½ years extended supervision.

(13:3) He was released from custody and began his period of extended supervision on November 13, 2012. (13:4, 5)

On June 13, 2014, Maxey was charged, in Kenosha County Case No. 2014CM824, with Obstructing an Officer as a Repeater in violation of Wis. Stats. §§ 946.41(1) and 939.62(1)(a). (1:1-2) On September 3, 2014, Maxey was convicted of this offense. (11:1-2).

On November 26, 2014, Maxey's extended supervision in 2011CF453 was revoked. (13:1) He was subsequently reincarcerated and received at Dodge Correctional Institution on December 12, 2014. Maxey's App. 3.

The Department of Corrections recognized that Maxey was entitled to credit on this reincarceration sentence. (13:2, 6-8) Specifically, when Maxey's Probation and Parole Agent prepared her report on November 17, 2014, she included a tabulation of jail credit that Maxey was due. (13:2)

This tabulation included the days that are at issue in this appeal, i.e., the time that Maxey spent in custody between June 16, 2014 and September 3, 2014 and the time that he spent in custody between October 14, 2014 and the

date that he was received at the institution (December 12, 2014). *Id.*

Later in her report, she again specifically stated that he was being held *on Court Case No. 11CF453* for the days that are at issue in this appeal. *Id.* at 6. She then reported that, as of the date her report was written, Maxey was entitled to 217 days custody credit *on his extended supervision revocation*. *Id.* at 7.

He had two years, six months, and two days available for reincarceration on the 2011 felony case. *Id.* at 7-8. He was sentenced to serve all of this time on the 2011 felony case. (30:6)

Then, on February 13, 2015, following the revocation of his probation in 2014CM824, Maxey was sentenced in this case to 18 months of initial confinement and six months of extended supervision. (15:1) The court pronounced this sentence consecutive to any previous sentence. *Id.*

Subsequently, Maxey filed a postconviction motion for sentence credit, claiming that he was entitled to 138 days of credit against the sentence pronounced in 2014CM824. (20:1-3) Specifically, he claimed that he was entitled to credit against his sentence in 2014CM824 for the time that he spent in custody between June 16, 2014 and September 3,

2014 and the time that he spent in custody between October 14, 2014 and December 12, 2014. *Id.*

At a motion hearing on June 15, 2015 the court reasoned that the sentence it pronounced was consecutive to the sentence in the 2011 felony case. (32:4) Therefore, the court held that Maxey was entitled to the credit he was claiming on the 2011 felony case but was not entitled to a "double credit" on both cases. *Id.* at 5.

Maxey's appellate counsel expressed his confusion: "I'm just not seeing where the 138 days was applied." *Id.* Then reiterated his confusion: "I don't mean to repeat myself. I'm just not seeing where he received that credit." *Id.* at 6.

The court denied Maxey's sentence credit motion. *Id.* at 5. It also denied a motion to reconsider. (28:1-2) This appeal followed.

ARGUMENT

I. STANDARD OF REVIEW

Whether sentence credit was properly denied under Wis. Stat. § 973.155 is a question of statutory interpretation and application which the appellate court reviews "independently while benefitting from prior decisions of other courts." *State v. Obriecht*, 363 Wis. 2d 816, 828 (2015).

II. THE TRIAL COURT CORRECTLY IDENTIFIED MAXEY'S SENTENCE CREDIT REQUEST AS AN IMPROPER REQUEST FOR DOUBLE CREDIT.

As the Wisconsin Supreme Court reiterated last year, "[W]hen sentences are consecutive, sentence credit is not issued to more than one sentence so long as the first sentence to be served is sufficient to receive the sentence credit at issue." *State v. Obriecht*, 363 Wis. 2d 816, 834.

In Maxey's case, the sentence credit at issue is for 138 days that Maxey spent in custody between June and December of 2014. Maxey's Br. at 5. Specifically, Maxey was in custody from June 16, 2014 to September 3, 2014 and again from October 14, 2014 to December 12, 2014. *Id.*

However, when Maxey was in custody on those days he was on an extended supervision hold on Kenosha County Circuit Court Case No. 11CF453. (13:2) Maxey's extended supervision was subsequently revoked. (13:1; 30:6)

The Department of Corrections credited Maxey with 217 days of custody credit on his 2011 extended supervision case, plus whatever additional time he spent in custody between the date the agent wrote her report and Maxey's reception at the institution. (13:7) The credit that he received on his 2011 extended supervision case included the 138 days that are at issue here. *Id.* at 2, 6-7. He had two years, six months, and two days available for

reincarceration on the 2011 felony case. *Id.* at 7-8. He was sentenced to serve all of this time on the 2011 felony case. (30:6) Therefore, the length of Maxey's sentence in the 2011 felony case was more than "sufficient to receive the sentence credit at issue."

Since the court in this case pronounced Maxey's sentence consecutive to his reincarceration sentence in the 2011 felony case, he is not entitled to receive a "double credit" here.

At Maxey's Sentencing After Revocation Hearing, his attorney recognized this fact which is why she stated, "It's odd to calculate, but *if the Court were to run a sentence concurrent to the 11CF file* I believe he would be entitled to 132 days of credit on this one." (Italics added.) *Id.*

However, the court rejected her recommendation that it pronounce a concurrent sentence. *Id.* at 8. By not awarding any sentence credit after Maxey's attorney asked for 132 days, the court implicitly found that Maxey received the credit he is seeking here against his 2011 felony reincarceration sentence. *Id.*

Therefore, the State respectfully asks that Maxey's appeal be denied and that the trial court's decision to

deny Maxey's postconviction motion for sentence credit be affirmed.

Dated at Kenosha, Wisconsin, this 25th day of February, 2016.

Respectfully submitted,

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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this Brief conforms to the rules contained in §809.19(8)(b) and (c) for a Brief produced with a monospace font. The length of this brief is 9 pages.

Date this 25th day of February, 2016.

Andrew J. Burgoyne
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CERTIFICATION OF ELECTRONIC FILING

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 25th day of February, 2016.

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