STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2016AP1416-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LARRY DAVIS,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND AN ORDER DENYING A POSTCONVICTION MOTION ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY, THE HONORABLE JANET C. PROTASIEWICZ, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

1. Is Davis entitled to sentence credit from the date of his arrest in this case (April 21, 2015) until the date he arrived at the prison to begin serving his revocation sentence (July 31, 2015), or is Davis entitled to sentence credit from the date of his arrest until the date his extended supervision for his old crimes was revoked (July 8, 2015)?

The circuit court concluded that Davis was entitled to sentence credit from the date of his arrest (April 21, 2015) until the date his extended supervision for his old crimes was revoked (July 8, 2015), a total of 78 days.

The State concedes that Davis is entitled to sentence credit from the date of his arrest (April 21, 2015) until the date he arrived at the prison to begin serving his revocation sentence (July 31, 2015), a total of 101 days.

2. Did the circuit court erroneously exercise its broad discretion when it imposed, as a condition of supervision, that Davis maintain absolute sobriety?

The circuit court concluded that the absolute sobriety condition was appropriate. It noted that the police officers who investigated the case indicated that Davis abuses drugs and alcohol and that alcohol consumption can impair judgment and is often linked to violent, aggressive, and victimizing behavior.

This Court should conclude that the circuit court properly exercised its discretion, as the absolute sobriety condition aids in Davis's rehabilitation and protects the public interest.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. This case involves the application of established principles of law to the facts presented.

SUPPLEMENTAL STATEMENT OF THE FACTS AND STATEMENT OF THE CASE

In 2011, Larry Davis was convicted of battery to injunction petitioner in Milwaukee County Circuit Court Case No. 2011CF1196.[1] (1:4.) For that crime, the court imposed and stayed a sentence of 24 months of initial confinement and 24 months of extended supervision and placed Davis on probation for three years. (1:6; 31:8.) Additionally, the court ordered that Davis have no contact with the victim, A.E., the mother of Davis's children and ex-girlfriend.[2] Davis's probation was revoked in 2013, and he began serving the stayed prison sentence.[3] (1:12; 31:8.)

On April 21, 2015, while on extended supervision for Case No. 2011CF1196, Davis ignored A.E.'s requests to leave her alone and went to her home. (31:5–8.) He forced his way

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[1] Davis was convicted of violating Wis. Stat. § 940.20(1m)(b), which states, "Any person who is subject to an injunction under s. 813.125 and who intentionally causes bodily harm to the petitioner who sought the injunction by an act done without the consent of the petitioner is guilty of a Class I felony." Wisconsin Stat. § 813.125 governs harassment restraining orders and injunctions.

[2] In accordance with Wis. Stat. § (Rule) 809.86(4), the State identifies the victim by her initials.

[3] The record lists the effective date of revocation as October 9, 2013. (1:13.)

in by "kicking at the door" and began attacking A.E. by "push[ing] her," "grabb[ing] her neck," and "punch[ing] her" "at least 20 times." (31:5–8.) The police arrested Davis that same day.

The State charged Davis in this case with the following four counts for his actions on April 21, 2015:

> 1. Intentionally contacting victim, witness or co-actor after court order for a felony conviction (repeater, domestic abuse assessments, domestic abuse repeater);
>
> 2. Misdemeanor battery (domestic abuse assessments, repeater, domestic abuse repeater);
>
> 3. Criminal trespass to a dwelling (domestic abuse assessments, repeater, domestic abuse repeater); and
>
> 4. Disorderly conduct (domestic abuse assessments, repeater, domestic abuse repeater).

(1:1–3; 3:1–3.) On July 23, 2015, Davis pled guilty to counts one and two. (4:2; 30:2–3.) In exchange, the State dismissed the penalty enhancers and dismissed and read in the two remaining counts. (4:2; 30:2–3.)

Meanwhile, Davis's extended supervision for Case No. 2011CF1196 was revoked on July 8, 2015, at least partially as a result of his arrest in this case.[4] (16; 31:10–11.) Davis was received at Dodge Correctional Institution on July 31, 2015, to serve his revocation sentence. (31:13.)

[4] Davis was "reconfined for two years and three months." (16.)

On August 26, 2015, the court sentenced Davis on count one to six years of imprisonment, consisting of three years of initial confinement followed by three years of extended supervision. (31:20–21; 23:1.) For count two, the court ordered nine months of jail. (31:21; 22:1.) The court ordered the sentences to run concurrently to each other and to all other previous sentences being served. (31:20–21; 23:1; 22:1.) Additionally, the court granted 101 days of sentence credit. (31:20.) The judgments of conviction show that the 101 days of sentence credit were applied only to count one, not count two. (10:3; 11:1.)

The court also imposed, as a condition of extended supervision, that Davis maintain absolute sobriety. (31:26.) However, the court stated it was "not going to order an AODA, unless the agent fe[lt] it[ ] [was] necessary." (31:26.) The court instructed that the agent could "take such steps as are necessary for any form of counseling that he or she fe[lt] [were] appropriate." (31:26.) Defense counsel agreed that the substance abuse program would not be appropriate, as he "d[id] not believe or [was] not aware of any substance abuse issue." (31:26.) Counsel did not otherwise object to the court's order that the defendant maintain absolute sobriety. (31:26–28.)

After sentencing, the Department of Corrections sent a letter to the circuit court advising that Davis was entitled to sentence credit on both counts since the counts ran concurrently to each other. (15.) In response, the court amended the judgment of conviction in two respects. (16.) First, the court awarded Davis the same amount of sentence credit on both counts, as advised by DOC. (16.) Second, the court reduced the credit from 101 to 78 days. (16.) The court reasoned that "an offender is entitled to credit towards a concurrent sentence up to the date of reconfinement in another case." (16.) The court then concluded that Davis's

"[r]econfinement occurred on July 8, 2015," the date his extended supervision in Case No. 2011CF1196 was revoked. (16.) Accordingly, the court determined that Davis was entitled to credit only from the date of arrest (April 21, 2015) to the date his extended supervision was revoked (July 8, 2015), a total of 78 days. (16.)

Davis filed a postconviction motion. (20.) Davis raised, among other claims, two issues that are relevant on appeal. First, Davis claimed that he should have been granted sentence credit from the date he was arrested (April 21, 2015) to the date he was returned to Dodge Correctional (July 31, 2015), a total of 101 days. (20:4–6.) Davis thus sought 23 additional days of sentence credit. (20:1.) Second, Davis argued that the circuit court erroneously exercised its discretion when it imposed the absolute sobriety condition, and he asked the court to vacate it. (20:10.)

The court held the sentence credit issue in abeyance, pending a decision from the Wisconsin Court of Appeals in *State v. Cotton*, No. 2015AP1625.[5] (21:2.) The court issued a decision once the court of appeals issued *Cotton*. It denied Davis's motion for 23 days of additional sentence credit. (24:4.) The court rejected the court of appeals' decision, noting that it had "several concerns about the reasoning in *Cotton*." (24:2.) Ultimately, the circuit court concluded that the Division of Hearings and Appeals' revocation and reconfinement determination was "equivalent to the act of sentencing" and therefore severed the connection between Davis's old and new charges. (24:4.) As a result, the court found that Davis was not entitled to credit in his case

[5] *State v. Cotton*, No. 2015AP1625 (Wis. Ct. App. May 24, 2016) (unpublished).

beyond the date of his revocation in Case No. 2011CF1196. (24:4.)

The court also denied Davis's "motion to vacate the condition of absolute sobriety." (21:5.) The court recognized that "[w]hile there may be no direct link between alcohol use and the defendant's conduct in this case, the prosecutor told the court at sentencing that the domestic violence supplemental report documented by the police officers who investigated this case indicated that the defendant abuses alcohol and/or drugs." (21:3.) Moreover, the court found that the prosecutor's statement was "supported by the record in [Case No. 2011CF1196], which shows that while the defendant was on probation in that case, he tested positive for THC and ethanol, even though he was required to maintain absolute sobriety." (21:3.) As a result of that finding, the court also rejected defense counsel's representation "to the court at sentencing in this case that the defendant had clean drug screens while on probation and that he maintained his absolute sobriety" because it conflicted with the record in Case No. 2011CF1196. (21:3–4.) Finally, the court noted that "[i]t is no secret that alcohol consumption may impair judgment and is often linked to violent and aggressive behavior, which can lead to victimization" before finding that it was "in the best interests of the defendant and the community that [Davis] maintain absolute sobriety during the period of extended supervision." (21:4.)

Davis now appeals. (25.)

ARGUMENT

I. Davis is entitled to credit up until the date he was received at Dodge Correctional Institution to serve his revocation sentence; accordingly, he should be granted 23 additional days of credit.

Davis first argues that he is entitled to "23 additional days of sentence credit, so that the judgment reflects 101 days of sentence credit." (Davis's Br. 7.) The State agrees.

A. Davis was "in custody" and at least a portion of his custody was "in connection with" the court of conduct for which Davis was sentenced on August 21, 2015.

"A convicted offender 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 the sentence was imposed." Wis. Stat. § 973.155(1)(a). In other words, to obtain sentence credit, the defendant must have been (a) in custody[6] and (b) the custody must have been connected[7] to the conduct that led to the sentence. *State v. Presley*, 2006 WI App 82, ¶ 6, 292 Wis. 2d 734, 715 N.W.2d 713.

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[6] "'Custody' means a detention status for which a defendant is subject to an escape charge if he leaves the place of detention." *State v. Obriecht*, 2015 WI 66, ¶ 25, 363 Wis. 2d 816, 867 N.W.2d 387.

[7] To qualify as time spent "'in connection with'" the course of conduct giving rise to that sentence, the custody must be "factually connected with the course of conduct for which the sentence was imposed." *State v. Elandis Johnson*, 2009 WI 57, ¶ 3, 318 Wis. 2d 21, 767 N.W.2d 207. When the necessary factual "connection" is present, presentence credit can be applied to multiple concurrent terms to which a defendant is sentenced.

If a defendant satisfies the two requirements, then "[c]redit is given for custody while awaiting trial, while being tried, and while awaiting sentencing after trial." *State v. Marcus Johnson*, 2007 WI 107, ¶ 4 n.2, 304 Wis. 2d 318, 735 N.W.2d 505 (citing Wis. Stat. § 973.155(1)(a)1., 2., and 3.); *see also State v. Beets*, 124 Wis. 2d 372, 377, 369 N.W.2d 382 (1985). Whether a defendant is entitled to sentence credit under the statute is a question of law that this Court reviews de novo. *Marcus Johnson*, 304 Wis. 2d 318, ¶ 27.

In this case, no one disputes that the time Davis spent in jail was time spent "in custody." Moreover, no one disputes that at least a portion of Davis's custody was spent "in connection with" the course of conduct for which he was ultimately sentenced on August 31, 2015.

The question here is whether there was any event that "severed" Davis's presentence custody from its "connection" to his crimes in this case. Everyone agrees that there was an event that severed the connection between Davis's pretrial custody and his crimes in this case. But the circuit court and the State and Davis disagree on which event severed the connection. The circuit court concluded that the relevant event was the day Davis's extended supervision for his old crime was revoked. The State and Davis contend that the relevant event was the day Davis was returned to Dodge Correctional. Thus, this Court must determine which of the two events actually severed Davis's presentence custody from its connection to his crimes in this case.

B. Davis's entry into Dodge Correctional on July 31, 2015, "severed" his presentence custody from its "connection" to his crimes in this case.

Two cases, *State v. Beets* and *State v. Presley*, provide insight into what types of events can sever a defendant's

presentence custody from its connection to the crimes in his case.

In *Beets*, the defendant was on probation for drug charges when he committed a burglary. *Beets,* 124 Wis. 2d at 374-75. Beets' probation on the drug charges was revoked, and he was sentenced to two concurrent three year terms. *Id.* Beets pled guilty to the burglary charge and was sentenced to a three year term, which was ordered to run concurrently to the drug sentences. *Id.* at 375. Beets claimed that he should have received additional sentence credit "for the period subsequent to his sentencing on the drug charges while he was awaiting, in prison, a hearing on the pending charge of burglary." *Id.*

The supreme court disagreed. The court recognized that there was "connection" since the "burglary charge initiated the scrutiny into Beets' background that resulted in the probation hold, the revocation, and the ultimate concurrent drug sentences." *Id.* at 378–79. However, the court did not award Beets any credit for the period he sought because "any connection which might have existed between the custody for the drug offense and the burglary was severed when the custody resulting from the probation hold was converted into a revocation and sentence." *Id.* at 379. From sentencing on the old charges forward, "Beets was in prison serving an imposed and unchallenged sentence; and whether he was also awaiting trial on the burglary charge was irrelevant" because, "[e]ven had the [new burglary] charge been dismissed, [Beets] still would have been in confinement" due to the sentence on the old charges. *Id.* Accordingly, the court did not award Beets any pretrial credit time for his sentence on his new crime for the period subsequent to his sentencing on the old charges. *Id.* at 383. Put simply, *Beets* instructs that "sentencing on one charge

severs the connection between the custody and the pending charges." *Id.*

In *Presley*, the defendant was on extended supervision when he committed a new crime. *Presley*, 292 Wis. 2d 734, ¶ 2. Presley's extended supervision was revoked, and he was ordered reconfined for five months and three days. *Id.* Presley pled guilty to the new crime and was sentenced to thirty months of initial confinement and thirty months of extended supervision. *Id.* "Sentencing on both the revoked extended supervision and the new charge occurred on the same day." *Id.* The court ordered the sentences to be served concurrently, and it "gave Presley sentence credit on the new charge for the time he spent in custody from the date he was arrested to the date his supervision was revoked." *Id.* Presley argued that he was entitled to credit from the date of his arrest to the date he was sentenced on both the new and old charges. *Id.* ¶ 3.

This Court agreed with Presley. *Id.* ¶ 1. Interpreting *Beets*, the court reasoned that "the lynchpin to the uncoupling of the connection between the new and old charges was the act of sentencing, not the revocation determination." *Id.* ¶ 9. The court concluded that the reconfinement hearing the circuit court held on the old, revoked charges qualified as a "form of sentencing." *Id.* ¶ 10. Because the reconfinement hearing constituted a "sentencing," it "sever[ed] the connection between the charges." *Id.* The court was careful to note that while a reconfinement hearing could sever the connection between the charges, a revocation could not. *Id.* ("Thus, a reconfinement hearing is a 'sentencing,' and under *Beets*, it, *not the revocation*, severs the connection between the charges." (emphasis added)). Applying that reasoning, the court concluded that Presley was "entitled to sentence credit on the new charge from the date of his arrest until the day of

sentencing on both charges because while his extended supervision was revoked, his 'resentencing' had not yet occurred." *Id.* ¶ 15.

At the time *Presley* was decided, the circuit courts were responsible for conducting reconfinement hearings once a defendant's supervision was revoked.[8] *See* Wis. Stat. § 302.113(9)(am) (2007–08). After *Presley*, the Legislature eliminated reconfinement hearings in the circuit court.[9] *See* Wis. Stat. § 302.113(9)(am) (2009–10). That change led to the following question: given the elimination of reconfinement hearings, can the revocation decision itself qualify as the "act of sentencing" that severs a defendant's presentence custody from its connection to the crimes in the new case? In this case, the circuit court answered that

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[8] Wisconsin Stat. § 302.113(9)(am) (2007–08) provided as follows:

> *If the extended supervision of the person is revoked, the person shall be returned to the circuit court* for the county in which the person was convicted of the offense for which he or she was on extended supervision, *and the court shall order the person to be returned to prison for any specified period of time* that does not exceed the amount of time remaining on the bifurcated sentence.

[9] Wis. Stat. § 302.113(9)(am) (2009–10) states the following:

> *If the extended supervision of the person is revoked, the reviewing authority shall order the person to be returned to prison for any specific period of time* that does not exceed the time remaining on the bifurcated sentence.

See also 2009 Wis. Act 28, § 2726.

question with a "yes."[10] The State, however, has consistently answered that question with a "no."

Since that question has arisen, the State has asserted the following rule, which it believes reflects the proper approach: when 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.[11]

The State finds support for that rule in *Presley* and Wis. Stat. § 304.072(4). In *Presley*, the State advanced a position essentially identical to the one that the circuit court adopted here: that Presley was only entitled to credit up to the date of his revocation because he began serving his revocation sentence on that date. *Presley*, 292 Wis. 2d 734, ¶ 10.

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[10] The circuit court wrote that it "fail[ed] to perceive a material legal distinction post-*Presley* between a reconfinement determination made by the court and a reconfinement determination made by the Division," and that "*Cotton* d[id] not explain why the Division's reconfinement determination carrie[d] no legal significance for purposes of determining when a person's reconfinement term resume[d] running when extended supervision ha[d] been revoked." (24:2–3.)

[11] The State has consistently taken this position in other recent cases, including *Cotton*, No. 2015AP1625-CR; *State v. Williams*, No. 2012AP357-CR (Wis. Ct. App. Jan. 29, 2013) (unpublished); *State v. Huff*, No. 2011AP2268-CR (Wis. Ct. App. July 31, 2012) (unpublished); and *State v. Jackson*, No. 2013AP27-CR (Wis. Ct. App. Oct. 29, 2013) (unpublished).

The *Presley* court outright rejected the State's position, in part based on Wis. Stat. § 304.072(4). *Id.* ¶ 14. As that court explained, Wis. Stat. § 304.072(4) provided that "[t]he sentence of a revoked parolee or person on extended supervision resumes running on the day he or she is received at a correctional institution . . . ." *Id.* ¶ 14. Given that language, the *Presley* court observed,

> If the State's position were to be adopted—that Presley was serving a sentence once the extended supervision was revoked—it would appear to conflict with § 304.072(4), which unambiguously states that the sentence begins once the offender is transported and received at a correctional institution, not when the revocation occurs.

Id. ¶ 14. The same is true here: to hold that the revocation date functions as an act of sentencing severing the connection between the old and new crimes would appear to conflict with Wis. Stat. § 304.072(4).

Furthermore, the Special Materials of the Wisconsin Jury Instructions devoted to sentence credit (Wis. JI-Criminal SM-34A) support that conclusion. *See State v. Gilbert*, 115 Wis. 2d 371, 379, 340 N.W.2d 511 (1983) (stating that SM-34A is persuasive authority for the correct interpretation of Wis. Stat. § 973.155). The comments to SM-34A provide that revocation sentences commence when the offender arrives at prison and that the "revocation date is irrelevant" for determining sentence credit. *Compare* Wis. JI-Criminal SM-34A comment 37b (April 2014) (stating that "[f]ollowing revocation of probation in the imposed-and-stayed-sentence-probation-imposed case, the sentence commences when the offender arrives at the prison. The revocation date is irrelevant.") *and id.* at comment 37c ("Sentences of revoked parolees or persons on extended supervision resume running on the date the person is received at the correctional institution") *with id.* at comment

37a (explaining that where a sentence is originally withheld and probation imposed, the sentence "commence[s] on the date of imposition").

Here, the circuit court discounted Wis. Stat. § 304.072(4) as inapplicable because it applies to sentence computation, not sentence credit. (24:3.) Nonetheless, statutes indicating a clear legislative intent for when sentences commence provide guidance for courts determining sentence credit under Wis. Stat. § 973.155. The fact that Wis. Stat. § 304.072(4) is not directed to a court or does not discuss credit directly does not make it inapplicable. To the contrary, Wis. Stat. § 304.072(4) is germane to the analysis: it's plain text demonstrates legislative intent that revocation sentences begin with an offender's transfer to prison, in the same way that an offender's sentence for any other crime begins on the day on which the court imposes sentence. As this Court explained in *Presley*, the circuit court's approach here would conflict with the legislative intent provided in Wis. Stat. § 304.072(4).

Consistent with Wis. Stat. § 304.072(4), *Presley* and *Beets*, Davis was entitled to credit on his revocation sentence for the days he spent in custody until he was received at Dodge Correctional on July 31, 2015. Consequently, the State concedes that Davis is entitled to 23 days of additional sentence credit, from April 21, 2015, through July 31, 2015.

II. The circuit court properly exercised its discretion in ordering Davis to maintain absolute sobriety as a condition of supervision.

Davis next claims that the circuit court "erroneously exercised its discretion when it ordered that Mr. Davis maintain absolute sobriety while on extended supervision" since there was "no indication that Mr. Davis abuses alcohol" or "that alcohol was related to the offense in this case."

(Davis's Br. 14.) Davis is wrong. The circuit court's decision to order that Davis refrain from consuming alcohol was reasonable and appropriate.

"Trial courts are granted broad discretion in determining conditions necessary for extended supervision; such discretion is subject only to a standard of reasonableness and appropriateness." *State v. Brad Miller*, 2005 WI App 114, ¶ 11, 283 Wis. 2d 465, 701 N.W.2d 47. "Whether a condition of extended supervision is reasonable and appropriate is determined by how well it serves the dual goals of supervision: rehabilitation of the defendant and the protection of a state or community interest." *Id.* This Court reviews the imposition of conditions for an erroneous exercise of discretion. *State v. Stewart*, 2006 WI App 67, ¶ 11, 291 Wis. 2d 480, 713 N.W.2d 165.

"A condition of supervision need not directly relate to the offense for which the defendant is convicted as long as the condition is reasonably related to the dual purposes of extended supervision." *Brad Miller,* 283 Wis. 2d 465, ¶ 13. For example, in *State v. Eugene Miller*, 175 Wis. 2d 204, 207, 499 N.W.2d 215 (Ct. App. 1993), the defendant had been previously convicted of making harassing telephone calls to women; his current case involved a burglary and theft. When imposing sentence for the burglary and theft, the court ordered, as a condition of probation, that the defendant refrain from calling any women without the permission of his probation officer. *Id.* at 207–08. This Court "recognized that while the defendant's past criminal conduct of making sexually explicit telephone calls to women was unrelated to the offense for which he was convicted, the defendant needed to be rehabilitated from that conduct." *Brad Miller*, 283 Wis. 2d 465, ¶ 12 (citing *Eugene Miller*, 175 Wis. 2d at 209-10). "Because the condition was rationally related to the defendant's need for rehabilitation, it was 'reasonable and

appropriate' as required by the probation statute." *Brad Miller*, 283 Wis. 2d 465, ¶ 12 (citing *Eugene Miller*, 175 Wis. 2d at 210).

Additionally, a condition of supervision that forces a defendant to "live more responsibly," is "clearly relevant to rehabilitation" and serves the public interest by making a defendant less likely to commit crimes. *See Brad Miller*, 283 Wis. 2d 465, ¶¶ 14-15; *see also State v. Rowan*, 2012 WI 60, ¶ 10, 341 Wis. 2d 281, 814 N.W.2d 854 ("It is also appropriate for circuit courts to consider an end result of encouraging lawful conduct, and thus increased protection of the public, when determining what individualized probation conditions are appropriate for a particular person.").

In this case, the circuit court had information that the defendant abused drugs and alcohol:

> The domestic violence supplemental report documented by the police officers who investigated this does indicate a prior history of violence; and it also indicates multiple risk factors, including the fact that the victim had called the police before and *that the suspect abuses alcohol and/or drugs.*

(31:7–8 (emphasis added).) Thus, Davis's contention that the "sentencing court had no indication that Mr. Davis abuses alcohol" is false. (Davis's Br. 14.)

Davis's other contention, that "the sentencing court had no indication" that "alcohol was related to the offense in this case," is irrelevant in light of *Brad Miller* and *Eugene Miller*. (Davis's Br. 14.) The record indicates that Davis has abused drugs and alcohol. (31:6–7; 21:3.) Regardless of the fact that drugs and alcohol may have been unrelated to *this* particular incident of domestic violence, Davis "needed to be

rehabilitated from that conduct." *Brad Miller*, 283 Wis. 2d 465, ¶ 12 (citing *Eugene Miller*, 175 Wis. 2d at 209–10).

Finally, as the circuit court properly recognized, drinking alcohol is known to be related to poor decision making, and it may impede an offender's ability to follow the rules of supervision and refrain from further illegal activity. (21:3–4.) Restricting alcohol consumption will help ensure that after his release, Davis's ability to make appropriate decisions will not be affected by an altered mental state. It will also protect society, especially his victim, from a continuation of his pattern of domestic abuse.

CONCLUSION

For the reasons given above, the State respectfully asks that this Court affirm the judgment of conviction based on Davis's challenge to the court's condition that Davis maintain absolute sobriety on supervision. It also respectfully asks that this Court reverse the portion of the circuit court's order denying Davis 23 additional days of sentence credit, and that this Court remand to the circuit court with directions to amend the amended judgment of conviction to reflect a total of 101 days of sentence credit.

Dated this 13th day of January, 2017.

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), (c) for a brief produced with a proportional serif font. The length of this brief is 4,347 words.

Dated this 13th day of January, 2017.

_____
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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 13th day of January, 2017.

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Assistant Attorney General