STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2017AP001337-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ZACHARY S. FRIEDLANDER,

Defendant-Appellant.

On Appeal From an Order Denying Sentence Credit
Entered in the Jefferson County Circuit Court, the
Honorable David J. Wambach, Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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TABLE OF CONTENTS

CASES CITED

WISCONSIN STATUTES CITED

OTHER AUTHORITIES

ISSUE PRESENTED

Is Friedlander entitled to additional sentence credit to account for the 65 days he was "at liberty" through no fault of his own, pursuant to ***State v. Riske*** and ***State v. Dentici***?

The circuit court denied Friedlander credit for this period of time.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Friedlander does not request oral argument as the briefs should fully present the issue on appeal. *See* Wis. Stat. § (RULE) 809.22(2)(b). Publication is not requested as the issue presented involves the application of well-settled rules to a fact situation not substantially different from that in published opinions. *See* Wis. Stat. § (RULE) 809.23(1)(b)1.

STATEMENT OF THE CASE AND FACTS

On April 15, 2016, Zachary S. Friedlander pled no contest to and proceeded to sentencing on one count of felony bail jumping. (40:1; App. 101-03). The plea agreement consisted of a joint recommendation for a withheld sentence, three years probation, and eight months in jail, forthwith, as a condition of probation. (36:1, 70:9-13; App. 155-58).

The state, in making its sentencing recommendation, noted that part of the basis for the joint recommendation was the fact that Friedlander was serving a prison sentence imposed in Jefferson County Case No. 14-CF-212. (70:9; App. 155). The parties expected Friedlander to be released from that sentence in early October 2016, and acknowledged

that the joint recommendation for eight months conditional jail time would extend Friedlander's release date by about "60 to 75 days." (70:9; App. 155).

The court then inquired whether the understanding of the parties, based on the joint recommendation, was that Friedlander would be released from prison to serve the remaining portion of the conditional jail time in the county jail. (70:13; App. 157). Counsel for Friedlander explained that he believed Friedlander would serve all of the conditional jail time in prison. (70:13; App. 157). The court questioned that understanding because "the word in the statute is "sentence," and this is conditional jail, which is not a sentence." (70:13; App. 157). The state then expressed its opinion that "one of two things will happen," either Friedlander would serve the remaining conditional time in prison or "they'll send him to the jail to finish it…" (70:13; App. 157). The court then explained:

> Mr. Friedlander, with the understanding that in all likelihood … you may have to go from prison to spending some time in the county jail before you're done with any incarceration.

(70:14; App. 158).

In response, Friedlander affirmed his plea and stated that he would like to proceed with his plea. (70:14; App. 158). The court then further explained that if it follows the joint recommendation: "that it may not be that you're able to spend all of this time in prison before being released to extended supervision and concurrent probation." (70:14-15; App. 158-59). After clarifying that he would have to finish out his current prison sentence in prison, Friedlander told the court that he would like to proceed. (70:15; App. 159).

Thereafter, the court adopted the joint recommendation of the parties and withheld sentence and placed Friedlander on probation for three years and ordered eight months in the county jail as a condition of probation. (70:19-20; App. 163-64). The court then explained:

> If that can be, despite this court's understanding, if the Department of Corrections interprets this as a sentence, such that it should be served in the prison system, you're not going to see this court taking any exception to that, and in many ways I think it would make a lot of sense, but I have stated what I believe the Court's legal conclusion to be, which is that because this is conditional jail time, it's not a sentence and so the incarceration may, because it does not meet the definition of a sentence, be interpreted similarly by the Department of Corrections, and so they may say when you're done serving your sentence in [14-CF-212] it may be that you're going to have to come here and then spend some time because this eight months jail the Court is ordering begins today.

(70:20-21; App. 164-65).

On November 23, 2016, Jefferson County Sheriff Captain Duane R. Scott sent a letter to the circuit court. (41). In that letter, Captain Scott recounted that Friedlander was "sentenced" in this case for felony bail jumping on April 15, 2016. (41). Captain Scott noted that the court ordered Friedlander, "as a condition…to serve an 8 month jail sentence forthwith. Mr. Friedlander was currently serving another prison sentence at Oshkosh prison and was returned to Oshkosh with a detainer." (41). Captain Scott further informed the court that on November 11, 2016, the county jail was contacted by the child support agency "inquiring if Mr. Friedlander was in custody." (41). According to Captain Scott, the Jefferson County Sheriff's Office believed

Friedlander was still in prison, but was informed by the child support agency that "he had been released on September 27, 2016, by the Wisconsin State Prison system without notice to the jail." (41). Next, Captain Scott's letter informed the court that Sergeant Timothy Behselich contacted Friedlander's probation officer, Amy Wisely, who informed Sergeant Behselich that Friedlander was in the area and that she would have him contact Captain Scott. (41). Captain Scott told Ms. Wisely that he believed Friedlander should report to the jail and, according to Captain Scott, Ms. Wisely said she would contact her supervisor. (41).

Captain Scott then informed the court that Friedlander called him back later that day and informed Captain Scott that a social worker at Oshkosh Correctional Institution had told him that his "time on 15 CF 326 was completed during his prison stay." (41). Further, Captain Scott relayed to the court that "Amber from DCI Records" told Sergeant Behselich that Friedlander "should have been picked up by his [p]robation agent to come to the jail to complete his sentence in September." (41).

Finally, Captain Scott's letter explained that the purpose of his letter was to request from the court "direction for his Probation Agent and the jail as to what should be done with Mr. Friedlander: should he report for the remainder of the time until his original release date on the 8 month sentence 12/11/2016? And what should be done with the days he was not in jail." (41). No warrant was issued for Friedlander's arrest.

The circuit court held a hearing concerning Captain Scott's letter on December 1, 2016. Friedlander, who was informed of the hearing by his probation agent the day prior, appeared for the hearing voluntarily and with his trial counsel. (71:2-3, 33; App. 105-06).

The court began the hearing by confirming that, while the court had authorized Huber release and work release on Friedlander's conditional jail term, the Sheriff's Office had not actually granted Friedlander release from jail pursuant to the court's order. (40:1, 71:7; App. 101, 110). The court also clarified that, generally, defendants are not entitled to earn good time credit while serving a jail term ordered as a condition of probation. (71:7-9; App. 110-12).[1] Next, the court made a finding of fact that Friedlander was released from prison on September 27, 2016. (71:9; App. 112). Moreover, the court found that from April 15, 2016, through September 27, 2016, Friedlander served "165 days of the eight-month jail sentence" and that he had 75 days left to serve as of September 27, 2016. (71:10, 22; App. 113, 125).

Next, Sheriff's Deputy Rebecca Owen testified via phone from the jail concerning her knowledge of Friedlander's case. (71:14-20; App. 117-23). Deputy Owen explained that on November 11, 2016, the jail first learned that Friedlander was no longer in custody of the Wisconsin State Prison system and that he had been released from prison on September 27, 2016. (71:15-16; App. 118-19). Deputy Owen further explained that Friedlander appeared in court for his plea and sentencing on April 15, 2016, on a "writ from OCI [Oshkosh Correctional Institution]" and that he was sent back to OCI on April 16, 2016, with a detainer "so OCI would contact us when he was done with his prison sentence to serve the remainder of this jail sentence in our county." (71:16; App. 119). Regarding the detainer, Deputy

[1] *Cf.* ***State v. Fearing***, 2000 WI App. 229, ¶10, fn.6 ("a court has the authority to order good time when it imposes confinement in jail as a condition of probation…" (citing ***Prue v. State***, 63 Wis. 2d 109, 114, 216 N.W.2d 43 (1974))).

Owen explained that the jail "still [has] the detainer, but OCI never contacted us to pick [Friedlander] up." (71:17; App. 120). Deputy Owen also explained that generally, it is the prison's responsibility to notify the jail when an inmate is available to be transported back to jail on a detainer, that "[i]f the prison doesn't let us know, we just assume he was still in prison," and that it is not an inmate's responsibility to report to jail after serving a prison sentence. (71:18-19; App. 121-22).

Next, the state questioned Deputy Owen about the jail's contact with Friedlander about "the need to complete his conditional jail time." (71:19; App. 122). Deputy Owen explained that Captain Scott contacted Friedlander on November 11, 2016, and that "we weren't going to put out a warrant or anything like that, but it was our understanding he would have to come back to serve that sentence." (71:19; App. 122).

Based upon the evidence and the record before the court, Friedlander's counsel argued that Friedlander was entitled to sentence credit against his conditional jail term pursuant to ***State v. Riske***, 152 Wis. 2d 260, 448 N.W.2d 260 (Ct. App. 1989), and ***State v. Dentici***, 2002 WI App 77, 251 Wis. 2d 436, 643 N.W.2d 180. (71:22-23). In response, the court reviewed these two cases and counsel called Friedlander to testify. (71:24-41; App. 127-144).

Friedlander testified that after sentencing he returned to Oshkosh Correctional Institution. (71:25; App. 128). Prior to his release on September 27, 2016, he spoke with his social worker and a records office staff member about the detainer. (71:26; App. 129). Friedlander testified that "I was told by the social worker that the detainer could not be in place because the time that I sat in Oshkosh would eat up the eight-month sentence that I received on April 15th for the

bail jumping charge." (71:27; App. 130). Friedlander further testified that he inquired again about the detainer and was told that he needed to contact his probation officer (71:28; App. 131). Friedlander testified that he spoke with his probation officer two times prior to his release and that "[i]n regards to the detainer, she told me that it was not up to her whatsoever; that it was up to the judge." (71:28-29; App. 131-32). Friedlander next explained that upon his release from prison on September 27, 2016, he immediately had face-to-face meeting with his probation officer and was again told that whether he had any time left to serve on the conditional jail term was up to the judge and out of her control. (71:29-30; App. 132-33).

Next, Friedlander testified that on November 11, 2016, he received a call from his probation officer, who told him to call Captain Scott at the Jefferson County Jail. (71:31; App. 134). Friedlander testified that his probation officer "asked or advised Captain Scott not to issue a warrant, and I, um, told both of them that if I needed to turn myself in, all they needed to do was call me and tell me. … I did everything in my power to resolve this." (71:32; App. 135).

Regarding his phone call with Captain Scott, Friedlander testified that Captain Scott did not tell him that he needed to report to the jail and that he asked Captain Scott not to issue a warrant because "if he needed me to report, just get a hold of me." (71:33; App. 136).

Prior to being cross examined by the state, the court asked Friedlander how many times he had been convicted of a crime. (71:33; App. 136). With the assistance of the state, the court noted that Friedlander has nine prior convictions. (71:34; App. 137).

On cross examination, Friedlander acknowledged that the court ordered him to serve eight months conditional jail time. (71:34-35; App. 137-38). With regards to why Friedlander thought he had completed his eight-month conditional jail term, Friedlander testified that he was told by the prison staff that "good time" would be applied to that sentence." (71:37-38; App.140-41). Nevertheless, Friedlander acknowledged that at the time of his plea and sentencing, he believed that he would have to return to the county jail to complete his conditional jail term. (71:39-40; App. 142-43).

The court then heard argument. Counsel for Friedlander argued that pursuant to ***Riske*** and ***Dentici***, and the evidence presented to the court, that Friedlander is entitled to credit against his conditional jail term from the date of his release from prison on September 27, 2017, through December 1, 2016. (71:42-45; App. 145-48). The state made no argument. (71:45; App. 148).

The court disagreed with Friedlander. (71:45; App. 148). First, the court noted that "it could not ignore the significant factual differences" between Friedlander's case and the facts in ***Dentici*** and ***Riske***. (71:45-47; App. 148-50). Second, the court considered Friedlander's prior convictions as they relate to his credibility and found him not to be credible "as it relates to his obligation to serve the remainder of this sentence." (71:47; App. 150). Third, the court faulted Friedlander for not proactively coming back to the court or to the jail to inquire about serving the remaining portion of his sentence. (71:47; App. 150). Thus, the court remanded Friedlander to the jail to serve the remainder of his conditional jail term. (71:47; App. 150). The court entered a written order concerning the December 1, 2016, hearing on December 12, 2016. (48).

Friedlander now appeals the court's order, which denied Friedlander any credit against his conditional jail term from September 27, 2016, through December 1, 2016. (48). Not only did the court's order require Friedlander to serve the remaining 75 days of his conditional jail term starting on December 1, 2016, but it has the effect of denying Friedlander 65 days sentence credit, should his probation be revoked in the future.

ARGUMENT

Friedlander Is Entitled to an Additional 65 Days Sentence Credit to Account for Time He Spent "at Liberty" through No Fault of His Own.

Normally, a defendant must be "in custody" to be entitled to sentence credit under Wis. Stat. § 973.155. However, time spent "at liberty" satisfies the in custody requirement when a defendant is released from custody through no fault of his own. That is exactly what happened in this case, and therefore, Friedlander is entitled to an additional 65 days sentence credit.

A. The Standard of Review

A circuit court's findings of fact concerning sentence credit are upheld unless they are clearly erroneous. ***State v. Johnson***, 2007 WI 107, ¶29, 304 Wis. 2d 318, 735 N.W.2d 505. Determining the appropriate amount of sentence credit to which a defendant is entitled, however, is a question of statutory interpretation that presents a question of law that an appellate court reviews de novo. ***Id.***, ¶27. Statutory interpretation generally begins with the language of the statute. *See* ***State ex rel. Kalal v. Circuit Court for Dane County***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110.

However, the court of appeals is bound by its prior decisions and "may not overrule, modify or withdraw language from a previously published decision of the court of appeals." ***Cook v. Cook***, 208 Wis. 2d 166, 190, 560 N.W.2d 246, 256 (1997).

B. Entitlement to Sentence Credit for Time Spent "At Liberty."

A defendant is entitled to credit towards the service of a sentence for time spent in custody in connection with the course of conduct for which sentence is imposed. Wis. Stat. § 973.155(1)(a). Accordingly, a defendant is entitled to sentence credit for time spent in custody as a condition of probation. ***State v. Gilbert***, 115 Wis. 2d 371, 379-80, 340 N.W.2d 511 (1983). When a defendant is released from custody through no fault of his own, he is entitled to sentence credit for the period of time spent at liberty. ***State v. Riske***, 152 Wis. 2d 260, 448 N.W.2d 260 (Ct. App. 1989) and ***State v. Dentici***, 2002 WI App 77, 251 Wis. 2d 436, 643 N.W.2d 180.

Wisconsin recognizes the principle that "where a prisoner is discharged from a penal institution, without any contributing fault on his part and without violation of conditions of parole, … his sentence continues to run while he is at liberty." *See* ***Riske***, 152 Wis. 2d at 264, ***Dentici***, 251 Wis. 2d at 443 (quoting ***White v. Pearlman***, 42 F.2d 788, 789 (10th Cir. 1930). As such, a defendant who is at liberty through no fault of his own satisfies the in custody requirement under Wis. Stat. § 973.155(1)(a). ***Dentici***, 251 Wis. 2d at 442-43. So long as the defendant also satisfies the statute in connection with requirement, sentence credit must be granted.

In ***Riske***, the defendant was sentenced to a year in jail. 152 Wis. 2d at 262. Riske surrendered to the jailer but was told that the jail could not accommodate him and that he should report back in 26 days. ***Id***. Riske failed to report back to the jail until he was arrested over a year later. ***Id***. The circuit court then ordered him to serve the full one-year jail sentence. ***Id***. On appeal, the state conceded and the court agreed that Riske was entitled to credit against his sentence to account for the 26 days he was out of custody at the direction of the jail. ***Id***. at 263-65.

> This is so because Riske was out of jail through no fault of his. Sentences are continuous, unless interrupted by escape, violation of parole, or some fault of the prisoner, and "where a prisoner is discharged from a penal institution, without any contributing fault on his part, and without violation of conditions of parole, … his sentence continues to run while he is at liberty." ***White v. Pearlman***, 42 F.2d 788, 789 (10th Cir. 1930).

Id. at 264.

The court noted that many other jurisdictions recognize this principle[2] and that the Wisconsin Supreme Court has recognized it by way of *dictum*,[3] as has the attorney general.[4] ***Id***. at 264-65.

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[2] Citing the Second, Ninth, Tenth, and Eleventh Circuit Courts of Appeals and appellate courts in Alabama, Maryland, Nebraska, and New Hampshire. Of the cases cited by the court, especially notable is ***U.S. v. Martinez***, 837 F.2d 861 (9th Cir. 1988). ***Martinez*** presents a fact scenario on par with Friedlander's: Martinez was erroneously never required to report to prison because of a clerical error. 837 F.2d at 862 When asked whether Martinez could be required to start serving his sentence upon the government's realization of its mistake, the court noted: "Under the doctrine of credit for time at liberty, a convicted person is entitled to credit against his sentence for the time he was erroneously at liberty provided there is a showing of simple or mere negligence on behalf of the government and provided the delay in execution of sentence was through no fault of his own." ***Martinez***, 837 F.2d at 865. Because our sentence credit statute was based upon the federal statute, Wisconsin courts have often looked to federal case law when interpreting Wis. Stat. § 973.155. *See* ***State v. Carter***, 2010 WI 77, ¶¶134-36, 327 Wis. 2d 1, 785 N.W.2d 516.

[3]Citing ***In re Crow: Habeas Corpus***, 60 Wis. 349, 370, 19 N.W. 713, 722 (1884) ("There is still another question arising from the cause of the failure of the actual imprisonment during the time or whole term of the sentence, of much importance, and that is, whether a prisoner can be rearrested and imprisoned after such term has expired, *when such failure was not the fault or crime* of the prisoner himself. In *Ex parte Clifford*, *supra*, it is held that recapture after the term can be made only in case of *escape* by the fault of the prisoner or criminal escape.").

[4] Citing 14 Op. Att'y Gen 512 (1925) (prisoner who because of flu epidemic was refused admission to prison on day his sentence began entitled to credit on sentence for period intervening until his admission).

In ***Dentici***, the defendant was placed on probation and ordered to serve 60 days in the House of Correction as a condition of probation. 251 Wis. 2d at 439. Upon arrival at the House of Correction, Dentici was told that the jail was overcrowded and that he should return in 25 days. ***Id***. Dentici returned as instructed and served his conditional jail term. ***Id***. Dentici's probation was revoked the next year and the court sentenced him to two years imprisonment. ***Id***. at 439-40. In the circuit court, Dentici sought but was denied credit against his sentence for the 25 days he spent out of custody because the jail was overcrowded. ***Id***. at 440.

On appeal, Dentici sought credit for the 25 days he spent "at liberty from the House of Correction through no fault of his own." ***Id***. Unlike in ***Riske***, the State contested whether Dentici was in custody during the period of time he was "at liberty through no fault of his own." ***Id***. at 441. The court disagreed with the state and concluded that "Dentici's leave from the House of Correction corresponds with the type of custody set forth in Wis. Stat. §§ 973.155(1)(a), 973.15(7), and 946.42(1)(a)." ***Id***.[5] The court relied upon ***Riske*** to confirm the principle that "a person's sentence for a crime will be credited for the time he was at liberty through no fault of the person." ***Id***. at 443.

Furthermore, the court rejected the state's argument that ***Riske*** was distinguishable because Dentici's conditional jail term was not a "sentence" and thus did not necessarily commence when the court placed him on probation. ***Id***. at

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[5] Wis. Stat. § 973.15(7) reads: "If a convicted offender escapes, the time during which he or she is unlawfully at large after escape shall not be computed as service of the sentence." Wis. Stat. § 946.42(1)(a) sets forth a list of types of custody which subject an offender to a criminal escape charge.

444. Rather, the court treated Dentici's conditional jail term as a sentence that began when ordered by the court and as indistinguishable from Riske's jail sentence. ***Id***.

C. Because Friedlander Was At Liberty Through No Fault of His Own From September 27, 2016, Through December 1, 2016, He Is Entitled to an Additional 65 Days Sentence Credit.

The uncontroverted evidence in the record shows that Friedlander was erroneously released from prison through no fault of his own. Nevertheless, the circuit court denied Friedlander credit for the 65 days he spent at liberty from the county jail or prison for three reasons: (1) factual differences between Friedlander's case and either ***Riske*** or ***Dentici***;[6] (2) Friedlander's credibility; and (3) Friedlander's failure to more proactively resolve his erroneous release from prison. (71:45-47; App. 148-50). Individually and as a whole, the circuit court's reasoning and application of the facts of Friedlander's case to the law is flawed.

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[6] While not necessarily relevant to the ultimate issue, the circuit court overstated the clarity and certainty concerning how, where, and when Friedlander would serve his conditional jail term. (*See* 70:9, 13-15, 19-21; App. 153, 157-59, 163-65). In spite of Friedlander's testimony that he believed he would have to return to the county jail to complete his conditional jail term, the circuit court itself made it clear at sentencing that he "may" have to go from prison to jail and that "[i]f that can be, despite this court's understanding, if the Department of Corrections interprets this as a sentence, such that it should be served in the prison system, *you're not going to see this court take any exception to that*, and in many ways I think it would make a lot of sense…" (70:14, 20-21; App. 158, 164-65) (emphasis added). Accordingly, faulting Friedlander, rather than, the jail, the prison, the DOC, the sheriff, or the state, by denying credit is contrary to the law and would ignore the undisputed facts in this case.

First, there is no "significant factual difference" between Friedlander's case and either ***Riske*** or ***Dentici***. The principle recognized in ***Riske*** and ***Dentici*** is that a defendant is entitled to credit against a sentence for time spent at liberty through no fault of the defendant. Just as in ***Riske*** and ***Dentici***, Friedlander submitted himself to the custody of the state, and the state directed Friedlander's actions and movements, and Friedlander complied.

Yes, Riske and Dentici were turned away from jail because of overcrowding whereas Friedlander was released from prison when the jail and prison miscommunicated about the time remaining on his conditional jail term, but in each case the defendant was at liberty in the community through no fault of his own. The principle set forth in ***Riske*** and ***Dentici*** is not limited to jail overcrowding. That is evident by the ***Riske*** court's reliance on ***U.S. v. Martinez***, *supra* at fn.2, which concerned a clerical error that resulted in the defendant's erroneous release from his sentence through no fault of his own. 837 F.3d at 865-66. Additionally, the ***Martinez*** court cited multiple cases that essentially mirror the facts of this case. ***Id***. at 865 (citing ***Green v. Christiansen***, 732 F.2d 1397, 1400 (9th Cit. 1984) (federal inmate erroneously released before the expiration of his sentence entitled to credit for the time he spent at liberty through no fault of his own) and ***Smith v. Swope***, 91 F.2d 260 (9th Cir. 1937) (defendant sentenced to prison 'forthwith' entitled to credit against his sentence for time spent at liberty as a result of federal marshal's failure to deliver the defendant to prison).

Second, while the circuit court may have been within its discretion to disregard Friedlander's independent testimony about the circumstances of his erroneous release from prison, other uncontroverted evidence and testimony

that the court did not reject demonstrates that Friedlander was at liberty through no fault of his own from September 27 through December 1, 2016. There is no question that Friedlander was ever in escape status. The government or state actor responsible for Friedlander's custody directed Friedlander where to go, and Friedlander complied. Thus, the circuit court's findings of fact concerning Friedlander's credibility are not significant to the resolution of the issue presented.

Third, the circuit court failed to correctly apply the law when it faulted Friedlander for not proactively solving a problem he did not cause. No case applying the principle of credit while at liberty requires defendants to correct or remedy errors committed by jails, prisons, courts, or other law enforcement officers. Moreover, the record is clear that Friedlander did not escape or otherwise evade or contribute to his erroneous release or the 65 day delay in his return to the jail. Captain Scott's letter and Deputy Owen's testimony support Friedlander's testimony that he cooperated with his probation officer and the jail and asked for a warrant not to be issued because he would turn himself in or report to the jail or court if and when instructed. Friedlander did just that on December 1, 2016, when he appeared for a hearing concerning Captain Scott's letter to the circuit court.

It was not Friedlander's responsibility to dictate to the state where her should serve his time or to correct a mistake he did not make. Under the law he cannot be punished for the mistakes of others, by being denied credit for the time he spent at liberty through no fault of his own. *See* ***Martinez***, 837 F.2d at 865; ***Green***, 732 F.2d at 1400.

Pursuant to Wis. Stat. § 973.155(1)(a), ***Riske***, and ***Dentici***, Friedlander is entitled to an additional 65 days sentence credit to account for the time he spent at liberty through no fault of his own.

CONCLUSION

For the reasons argued above, Zachary S. Friedlander respectfully asks this Court to reverse the circuit court's December 12, 2016, order and remand this case to the circuit court with directions to amend Friedlander's judgment of conviction to clarify that, if his probation is revoked, he is entitled to 65 days sentence credit to account for his time at liberty from September 27, 2016, through December 1, 2016, in addition to the full eight-months he spent in prison and jail serving the conditional jail term ordered by the circuit court.

Dated this 6th day of September, 2017.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 4,641 words.

CERTIFICATE OF COMPLIANCE WITH 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 § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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 6th day of September, 2017.

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Pages

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

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 one or more initials or other appropriate pseudonym or designation 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.

Dated this 6th day of September, 2017.

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