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COURT OF APPEALS

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OF WISCONSIN**

DISTRICT I

Appeal Case No. 2017AP002165-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

TERRY TERRELL ANDERSON,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING A MOTION
FOR SENTENCE CREDIT ENTERED IN THE
MILWAUKEE COUNTY CIRCUIT COURT, THE
HONORABLE T. CHRISTOPHER DEE, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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BRIEF OF PLAINTIFF-RESPONDENT

ISSUE PRESENTED

Did the circuit court err in denying Terry T. Anderson 106 days of sentence credit on a sentence set to be served consecutively to revocation sentences previously imposed?

The circuit court determined that Anderson was not entitled to sentence credit on the consecutive sentence because the time he sought had been credited to his previously imposed revocation sentences.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

On August 5, 2016, Anderson was released from prison to serve the two year extended supervision portion of his felony sentence in Milwaukee County case 14CF4230. (R21:4). Three and half months after his release from custody, Anderson violated his extended supervision by committing a new felony offense. (R1). On November 28, 2016, Anderson violently assaulted a woman beating her to the point that she lost consciousness. *Id.* Anderson fled the scene prior to the arrival of law enforcement. *Id.* On November 30, 2016, two days after the assault, Anderson was arrested at his residence by Wisconsin Department of Corrections agents for violating the terms of his extended supervision in 2014CF4230. (R21:1-4). Starting on November 30, 2016, Anderson was held in custody on a Department of Correction hold in case 2014CF4230. *Id.*

On December 8, 2016, Anderson was charged with battery, disorderly conduct, witness intimidation, all as a habitual criminal, for the November 28, 2016, assault. (R1). The new charges were documented in Milwaukee County Circuit Court case 16CF5479. *Id.* Anderson did not make his initial appearance on the new case until December 20, 2016. (R2, 3). Anderson was held on ten thousand dollars cash bail. *Id.*

On March 9, 2017, Anderson plead guilty to battery and disorderly conduct in 16CF5479: the witness intimidation charges were dismissed. (R12, 13). On March 15, 2017, Anderson was sentenced to two years imprisonment as to both misdemeanor counts, bifurcated as one year initial confinement and one year extended supervision, consecutive to each other, and to his sentence in 14CF4230. (R19). The court granted

Anderson 106 days of pre-trial incarceration credit as to case 16CF5479. *Id.* This sentence was ordered to be served consecutively to his first prison sentence, case 14CF4230. *Id.*

On April 4, 2017, Anderson's extended supervision in Milwaukee County case 14CF4230 was revoked pursuant to the Revocation Order and Warrant issued by the Division of Hearings and Appeals. (R21:4). On the Revocation Order dated April 4, 2017, Anderson was ordered to receive credit toward his re-confinement term from November 30, 2016, until his receipt at the institution. *Id.* This period included the 106 days of credit which had been granted against the sentence in 16CF5479. (R21:1-4).

On August 23, 2017, Department of Corrections Sentencing Associate Rachel Ellenz wrote a letter to the Hon. Michael J. Hanrahan, Milwaukee County Circuit Court, requesting a review of the 106 days ordered on the judgement of conviction in case 2016CF5479. (R21:1). According to the Department of Corrections, Anderson had been given credit for the 106 days on his revocation sentence in 14CF4230. (R21:4). On August 30, 2017, the Hon. Michael J. Hanrahan, Milwaukee County Circuit Court issued an order amending the original judgement of conviction and reducing the sentence credit from 106 says to zero. (R22).

On October 9, 2017, Anderson filed a motion for reconsideration of his sentence credit with the circuit court in 16CF5479. (R24). On October 13, 2017, the Honorable T. Christopher Dee issued a Decision and Order denying Anderson's motion for reconsideration. (R25). Anderson appeals that order. (R26).

STANDARD OF REVIEW

This court reviews a circuit court's decision on a defendant's request for sentence credit de novo. *State v. Presley*, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W. 2d 713.

ARGUMENT

Anderson Is Not Entitled To The Requested Sentence Credit

On appeal, Anderson acknowledges he was serving a term of extended supervision imposed in case 2014CF4230 when he was arrested in the instant case on November 30, 2016. Anderson also acknowledges he seeks credit in the instant case 2016CF5479 for time he spent in custody after November 30, 2016, even though he has already received credit for that time against his reconfinement in case 2014CF4230. Because Anderson's sentence in 2016CF5479 was consecutive to any other sentence Anderson is not entitled to sentence credit in both cases.

A. Legal standards.

“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). Thus, to obtain sentence credit, the defendant must have been (a) in custody and (b) the custody must have been connected to the conduct that led to the sentence. *Presley*, 292 Wis. 2d 734. “[C]redit is to be given on the eventual sentence for all periods of custody: From arrest to trial, the trial itself, and from the date of conviction to sentence.” *State v. Beets*, 124 Wis. 2d 372, 377, 369 N.W. 2d 382 (1985).

In *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W. 2d 533 (1988), the Supreme Court construed Wis. Stat. § 973.155 to prohibit so-called dual credit for pretrial custody when credit has already been awarded for the same time on another consecutive sentence. “Credit is to be given on a day-for-day basis, which is not to be duplicatively credited to more than one of the sentences imposed to run consecutively.” *Boettcher*, 144 Wis. 2d at 87. *State v. Boettcher*, is the controlling case for Anderson's circumstances. The *Boettcher* court explained:

the public policy behind the statute impels the conclusion we reach here: That custody credits should be applied in a mathematically linear fashion. The total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences. For ease in calculation and clarity in respect to subsequent exercise of court discretion, the credits should be applied to the sentence that is first imposed.

Id. at 100. Moreover, “ ‘[t]he objective with consecutive sentences is to assure that credit is awarded against one, but only one, of the consecutive sentences.’ ” *Id.* at 101 (citation omitted).

B. The circuit court properly concluded Anderson already received 106 days of credit on his revocation sentence in 2014CF4230, therefore he is not entitled dual credit on his consecutive sentence in 2016CF5479.

Anderson received 106 days credit toward his revocation sentence in 2014CF4230. Anderson believes he should also receive 106 days credit in 2016CF5479. Because the most recent sentence was to be served consecutive to any other sentence, Anderson is not entitled to dual credit.

Anderson contends *Boettcher* is inapplicable because he was not serving a sentence in case 2014CF4230 on March 15, 2017, when the circuit court sentenced him on the present case. Anderson’s appeal is based upon his mistaken belief as to which case created the first sentence. Anderson argues that on March 15, 2017, he was merely on an extended supervision hold in case 2014CF4230 and that he resumed serving a sentence in case 2014CF4230 only on April 4, 2017, after his extended supervision was revoked and he returned to prison.

To demonstrate he was not serving a sentence on March 15, 2017, in case 2014CF4230, Anderson directs our attention to several statues including Wis. Stat. § 304.072. It states, in pertinent part:

[t]he sentence of a revoked ... person on extended supervision resumes running on the day he or she is received at a correctional institution subject to sentence credit for the period of custody in a jail ... or any other detention facility pending revocation.

Wis. Stats. § 304.072(4). Therefore, according to Anderson when he was sentenced on March 15, 2017, he was serving only his sentences in the instant case. According to Anderson he should receive credit against those sentences for time in custody even though he would eventually receive credit for that

time against his reconfinement in case 2014CF4230. Anderson is wrong as to his sentence calculations.

Regardless of the status of his sentence in case 2014CF4230 on March 15, 2017, Anderson explicitly concedes that he was serving the extended supervision component of that sentence on November 28, 2016. *See* Wis. Stat. § 973.01(2) (explaining that a bifurcated sentence consists of a term of confinement and a term of extended supervision). Thus, although Anderson's sentence in 2014CF4230 may have “resume[d] running” when Anderson reached a correctional institution, *see* Wis. Stat. § 304.072(4), he received that sentence before the circuit court imposed his sentences in the instant case. *Boettcher* provides that sentence credit for consecutive terms should be applied only once and only “to the sentence that is first imposed.” *Id.*, 144 Wis. 2d at 100. Therefore, any credit for time in custody in connection with both cases should be applied first and only against his reconfinement in case 2014CF4230. *See Boettcher*, 144 Wis. 2d at 100.

CONCLUSION

For the foregoing reasons, Anderson is not entitled to the additional 106 days of sentence credit in 16CF5479. The State respectfully asks that this court affirm the order of the circuit court denying Anderson’s motion.

Dated this _____ day of May, 2018.

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 word count of this brief is 1,565.

Date

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**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 s. 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.

Date

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