STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case Nos. 2017AP2440-CR & 2017AP2441-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

RICHARD H. HARRISON, JR.,

Defendant-Respondent.

On Appeal from an Judgment of Conviction and Order Regarding Sentence Credit Entered in the Clark County Circuit Court, The Honorable Nicholas J. Brazeau, Jr., Presiding

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RESPONSE BRIEF OF DEFENDANT-RESPONDENT

JEREMY A. NEWMAN
Assistant State Public Defender
State Bar No. 1084404

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 264-8566
newmanj@opd.wi.gov

Attorney for Defendant-Respondent

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ISSUE PRESENTED

In Clark County Case Nos. 2007CF115 and 2008CF129, Richard H. Harrison, Jr. was sentenced to three years initial confinement and three years extended supervision. Harrison's extended supervision in these concurrent sentences was delayed, however, and he instead spent all or almost all of his extended supervision in prison as a result of originally consecutive but now-vacated sentences in Clark County Case No. 2010CF88 and Ashland County Case No. 2011CF82. Did the circuit court err when it granted Harrison credit against his concurrent sentences in Case Nos. 2007CF115 and 2008CF129 for time spent in prison serving the vacated consecutive sentences?

The circuit court granted Harrison's motion for credit for time served and ordered the Wisconsin Department of Corrections to re-compute Harrisons sentences in Case Nos. 2007CF115 and 2008CF129 to properly account the time Harrison spent in custody in connection with the sentences imposed in Case Nos. 2007CF115 and 2008CF129.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Defendant-Respondent Richard H. Harrison, Jr., does not request oral argument as the briefs should fully present the issue on appeal. Wis. Stat. § 809.22(2)(b). Publication may be appropriate because the Wisconsin Department of Corrections' sentence computation and the state's position are contrary to, not only clearly established precedent, but also recent persuasive authority from this Court. *See* ***State v. Zastrow***, No. 2015AP2182, unpublished slip op., (Ct. App. June 27, 2017). (Def.-Resp. App. 101-108). *See also* Wis. Stat. § 809.23(1)(a)1. and 2.

STATEMENT OF THE CASE

Harrison relies primarily on the Plaintiff-Appellant's Statement of the Case. However, Harrison finds it necessary to provide the following supplemental facts and context.

The 2007 and 2008 cases

On December 21, 2011, Harrison was sentenced in Clark County Case Nos. 2007CF115 (the 2007 case) and 2008CF129 (the 2008 case). (70, 2017AP2441:13).[1] In each case, the court imposed six years imprisonment, consisting of three years initial confinement and three years extended supervision. (*Id.*). The court ordered these sentences to be served concurrent to one another and granted 462 days sentence credit in the 2007 case and 119 days sentence credit in the 2008 case. (*Id.*).

Accordingly, accounting for presentence credit, had Harrison never been convicted or sentenced in any other case, his release date to extended supervision would have been approximately September 9, 2013, in the 2007 case and August 22, 2014, in the 2008 case. Further, Harrison's maximum discharge date would have been approximately September 9, 2016, in the 2007 case and August 22, 2017, in the 2008 case. To aid the reader, Harrison's concurrent sentence structure in the 2007 and 2008 cases, if no other sentences had been imposed, is detailed below:[2]

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[1] Harrison's citations to the record are to the record on appeal in 2017AP2440 unless otherwise noted.

[2] Wisconsin Department of Corrections sentence computation forms are included in the record at 79:45-48. The format used below mirrors the DOC's sentence computation method, but is simplified to detail only the sentence structure in the 2007 and 2008 cases.

- **Case No. 2007CF115**:

	year	month	day
Sentencing date:	2011	12	21
Less sentence credit (462 days):	01	03	12
Date sentence begins:	2010	09	09
Term of initial confinement:	03	00	00
Extended supervision release date:	**2013**	**09**	**09**
Term of extended supervision:	03	00	00
Maximum discharge date:	**2016**	**09**	**09**

- **Case No. 2008CF129**:

	year	month	day
Sentencing date:	2011	12	21
Less sentence credit (119 days):	00	03	29
Date sentence begins:	2011	08	22
Term of initial confinement:	03	00	00
Extended supervision release date:	**2014**	**08**	**22**[3]
Term of extended supervision:	03	00	00
Maximum discharge date:	**2017**	**08**	**22**

[3] Harrison's extended supervision release date in Case No. 2008CF129 was "adjusted" from August 22, 2014, to February 20, 2014, pursuant to the circuit court's grant of sentence adjustment, under Wis. Stat. § 973.195, on that date. (*See* 79:45, 47, 2017AP2441:18).

The 2010 and 2011 cases

On January 4, 2012, Harrison was sentenced in Clark County Case No. 2010CF88 (the 2010 case) to 20 years imprisonment, consisting of 13 years initial confinement and 7 years extended supervision. (79:2, 6-7). The court ordered the sentences imposed in this case to be served consecutive to the 2007 and 2008 concurrent sentences. (*Id*.).

On March 13, 2013, Harrison was sentenced in Ashland County Case No. 2011CF82 (the 2011 case) to 40 years imprisonment, consisting of 30 years initial confinement and 10 years extended supervision. (79:2, 7). The court ordered this sentence to be served consecutive to all previously imposed sentences. (*Id*.).

In January 2015, the Wisconsin Supreme Court affirmed a decision and order of the Wisconsin Court of Appeals remanding the 2010 case to the circuit court for a new trial.[4] (79:2, 7). On the state's motion, the circuit court dismissed the 2010 case on June 23, 2015. (79:7-8).

On January 6, 2017, the Federal District Court for the Western District of Wisconsin granted Harrison's petition for a writ of habeas corpus with respect to the 2011 case. (79:7, 9-42).[5] Accordingly, the circuit court vacated Harrison's conviction, and Harrison was released from prison on January 6, 2017. (79:43, 1). This case is currently set for retrial.[6]

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[4] ***State v. Harrison***, 2015 WI 5, 360 Wis. 2d 246, 858 N.W.2d 372.

[5] ***Harrison v. Tegels***, 216 F.Supp. 3d 956 (W.D. Wis. 2016).

[6] According to Wisconsin Circuit Court Access, as of the present date, Harrison's jury trial in Ashland County Case No. 2011CF82 is scheduled for July 6-9, 2018.

Harrison's motion for sentence credit

On May 1, 2017, Harrison filed a *pro se* "Motion to modify to time served" in the 2007 and 2008 cases. (77). The court subsequently appointed an attorney to represent Harrison. (78). On August 25, 2017, Harrison, through counsel, filed the request for sentence credit that is the subject of the state's appeal. (79, 80).

Harrison's motion requested credit for time served against the concurrent sentences in the 2007 and 2008 cases, to properly account for the time Harrison spent in custody in connection with these sentences through January 6, 2017. (80).

The court issued a written decision and order granting Harrison's motion on November 3, 2017. (85). The court outlined the procedural history of these cases and stated that:

> Due to the consecutive nature of the later two sentences, the defendant never commenced his extended supervision with regard to 07CF115 or 08CF129. Had he started his extended supervision as contemplated by the original sentences in those case[s], he now would have completed the six year sentences.

(85:1-2). After rejecting the state's reliance on ***State v. Allison***, 99 Wis. 2d 391, 299 N.W.2d 286 (Ct. App. 1980), which the court found was distinguishable, and discussing ***Tucker v. Peyton***, 357 F.2d 115 (4th Cir. 1966), which the court found to be persuasive (85:2-3), the court explained its decision:

> [W]ith the vacating of the sentence[s] in 10CF88 and 11CF82, the serving of extended supervision should date back to those dates previously calculated by the Department of Corrections, and that Harrison should receive credit for that time spent in prison as the

> confinement portion of those cases. *Although Harrison will have spent all or almost all of his time in confinement, rather than the three (3) years of extended supervision* as contemplated by his sentences in the 07CF115 and 08CF129 cases, he should at least receive credit which will extinguish those sentences. This Court believes it is silly to view the incarceration time as simply wasted, dead time, as Harrison was already serving his six (6) year prison sentence when the other two sentences were imposed.
>
> This decision is also fundamentally fair. Harrison started serving his sentences in 07CF115 and 08CF129. The Department of Corrections thought he had additional confinement to serve, so rightly delayed his extended supervision. In fact, there was not additional confinement (vacated), so only those sentences for 07CF115 and 08CF129 exist. *Even if extended supervision had been converted to confinement time, six (6) years would be the maximum period of the sentence.* The remedy is easily available now and makes sense.
>
> The Department of Corrections is ordered to adjust its records accordingly.

(85:3-4) (Emphasis added). The state then initiated this appeal.

ARGUMENT

The Circuit Court Did Not Err Because Harrison Is Entitled to Credit Against the Sentences Imposed in the 2007 and 2008 Cases for Time Spent in Custody in Connection With These Cases through His Release on January 6, 2017.

The state's argument boils down to this: Harrison is not entitled to credit because the time Harrison spent in prison serving the now-vacated sentences in the 2010 and 2011 cases was not connected to the course of conduct for which sentences were imposed in the 2007 and 2008 cases. (State's brief at 6-8).[7]

The state's overly simplistic argument must be rejected because it ignores the plain text and purpose of the sentence credit statute as well as other relevant sentencing statutes and it fails to appreciate or apply controlling and persuasive precedent.

[7] Inexplicably, the state twice asserts that the circuit court granted "roughly 12 years" sentence credit. (State's br. at 1). It is unclear how the state arrived at this total as Harrison's motion and the circuit court's order clearly concerned credit for the time that Harrison spent in custody serving the 2007 and 2008 sentences through his release from prison on January 6, 2017. At most, the circuit court clarified that by the time it entered its order on November 3, 2017, Harrison should have discharged from his *six-year* concurrent sentences.

A. The standard of review, relevant sentencing statutes, and the controlling and persuasive precedent.

The standard of review

Statutory interpretation and application present questions of law that appellate courts review independently while benefitting from the prior decisions of other courts. ***State v. Obriecht***, 363 Wis. 2d 816, ¶21. A circuit court's findings of fact are reviewed under a clearly erroneous standard of review. ***State v. Johnson*** 2007 WI 107, ¶29, 304 Wis. 2d 318, 735 N.W.2d 318.

Wis. Stat. § 973.155

The sentence credit statute "originated as a matter of equal protection," and "is designed to afford fairness so that a person does not serve more time than that to which he or she is sentenced." ***State v. Obriecht***, 2015 WI 66, ¶23, 363 Wis. 2d 816, 867 N.W.2d 387. Wisconsin Stat. § 973.155(1)(a) provides: "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 sentence was imposed." Accordingly, sentence credit is due when a defendant is (1) "in custody" and (2) the custody was "in connection with the course of conduct for which sentence was imposed." ***Id.***, ¶25.

Wis. Stat. §§ 973.15 and 302.113(4)

A circuit court's criminal sentencing authority is controlled by statute. ***Donaldson v. State***, 93 Wis. 2d 306, 310, 286 N.W.2d 817 (1980). Wisconsin Stat. § 973.15 states that "sentences commence on noon of the date of sentence" and sentencing courts "may impose as many sentences as

there are convictions and may provide that any such sentence be concurrent with or consecutive to any other sentence imposed at the same time or previously." Wis. Stat. §§ 973.15(1), (2). When consecutive sentences are imposed, periods of initial confinement are served consecutive to one another and then periods of extended supervision are served consecutive to one another. Wis. Stat. § 973.15(2m)(b)2. Further, "[s]entences are continuous, unless interrupted by escape, violation of parole, or some fault of the prisoner," or if stayed by the sentencing court. *See* Wis. Stat. §§ 973.15(7) and (8) and ***State v. Riske***, 152 Wis. 2d 260, 264, 448 N.W.2d 260 (Ct. App. 1989).

Accordingly, the Wisconsin Department of Corrections is required to compute all consecutive sentences "as one continuous sentence" and "any term of extended supervision" must be served after serving "all terms of confinement in prison." Wis. Stat. § 302.113(4). Hence, pursuant to Wis. Stat. §§ 973.15, 973.155, and 302.113(4), a defendant's sentence continues running unless interrupted by some lawful authority.

Wis. Stat. § 973.04

Wisconsin Stat. § 973.04 concerns a defendant's entitlement to credit against a new sentence for time previously served for the same crime: "When a sentence is vacated and a new sentence is imposed upon the defendant for the same crime, the department shall credit the defendant with confinement previously served." Pursuant to the plain text of the statute, credit is only due under § 973.04 when "a new sentence is imposed upon the defendant." Thus, § 973.04 has no specific application to Harrison's case because no "new sentence" has been imposed in the 2010 or 2011 cases.

Controlling and persuasive precedent

The initial failure in the state's argument is that it ignores the legal and factual significance of a vacated judgment of conviction and sentence. To vacate a judgment of conviction or sentence means that the relevant judgment has been nullified, cancelled, voided, and invalidated and that it "lacks force or effect and places the parties in the position they occupied before the entry of the judgment." ***State v. Lamar***, 2011 WI 50, ¶39 n.10, 334 Wis. 2d 536, 799 N.W.2d 758 (citation omitted). Stated simply, it is "as if there had been no judgment." *See* ***id***.

Beyond failing to recognize the significance of the fact that Harrison's sentences in the 2010 and 2011 cases have been vacated and no new sentences have been imposed, the state next misapplies the holding in ***State v. Allison***, 99 Wis. 2d 391, 299 N.W.2d 286 (1980) and fails to recognize the persuasive authority in ***Tucker v. Peyton***, 357 F.2d 115 (4th Cir. 1966). (*See* State's br. at 6-8). Finally, the state ignores recent persuasive authority from this Court that supports Harrison's claim of credit for time served and the circuit court's decision in this case. *See* ***State v. Zastrow***, No. 2015AP2182, unpublished slip op. (Ct. App. June 27, 2017) (Def.-Resp. App. 101-108).

In ***State v. Allison***, the court of appeals held that the circuit court did not abuse its discretion "when it refused to give the defendant credit for time served on an unrelated conviction which was voided." 99 Wis. 2d at 391. In 1971, Allison was convicted of rape and sexual perversion. ***Id***. at 392. Allison served approximately two years in prison for these convictions. ***Id***. In 1975, Allison was again convicted of rape and sexual perversion and sentenced to 34 years imprisonment. ***Id***. In 1979, while Allison was serving the

sentences imposed in 1975, Allison's 1971 convictions were overturned by a federal court. ***Id***. Thereafter, Allison moved the circuit court for credit against the sentence imposed for the 1975 convictions for the time he previously served on the voided 1971 conviction. ***Id***. at 392-393.

The court of appeals affirmed the circuit court's denial of credit. ***Id***. at 394. In doing so, the court called Allison's interpretation and reliance on ***Tucker v. Peyton*** erroneous. ***Id***. at 393. The court of appeals set forth the rule from ***Tucker***: "when a defendant is sentenced on consecutive sentences for related offenses and the earlier sentence is invalid, the later sentence must be advanced to the date it would have begun but for the intervening invalid sentence." ***Id***. The court also distinguished the ***Tucker*** rule from a rule that would entitle "a defendant to credit for time spent on an invalid conviction *against a later unrelated crime*." ***Id***.) (emphasis added) (citing ***Miller v. Cox***, 443 F.2d 1019, 1021 (4th Cir. 1971) (holding that granting credit against a sentence imposed for a crime committed after a voided conviction or sentence would amount to allowing a defendant to obtain a "line of credit" for future crimes, which would be against clear public policy).

In ***Tucker v. Peyton***, a Virginia state prisoner sought habeas relief on the grounds that the earliest of a string of consecutive sentences was invalid and that, as a result, the state of Virginia was required to advance the commencement of his current sentence, which would result in his immediate release from custody. 357 F.2d at 116. The court of appeals agreed and remanded the case to the district court for a factual determination regarding the claimed invalid sentence. ***Id***. As relevant here, Tucker was convicted and sentenced, in 1942, 1948, 1956, 1957, and 1960 to consecutive sentences that

were procedurally related, but factually distinct. ***Id***.[8] The court granted habeas relief based on the premise that, with respect to consecutive sentences, if one of Tucker's consecutive sentences was invalid, then his remaining sentence must be advanced to commence when it otherwise would have but for the invalid sentence. ***Id***. at 118-119.

Applying the principles from ***Lamar***, ***Allison*** and ***Tucker***, along with Wis. Stat. §§ 973.15, 973.155, and 973.04, the Wisconsin Court of Appeals recently granted relief similar to the relief granted by the circuit court in Harrison's case. In ***State v. Zastrow***, the court of appeals reversed an order by the circuit court and remanded the case with directions "that the DOC recalculate the date of Zastrow's release to extended supervision." ***State v. Zastrow***, No. 2015AP2182, unpublished slip op., ¶1. (Def.-Resp. App. at 101-102).

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[8] In 1942 and 1948, Tucker was convicted of grand larceny. ***Tucker***, 357 F.2d at 116. Following his second grand larceny conviction, Tucker received an additional sentence as a recidivist. ***Id***. In 1956, Tucker was convicted of breaking and entering. ***Id***. Following this conviction he received a "second recidivist conviction" and sentence. ***Id***. In 1957 and 1960, Tucker escaped from custody and was recaptured and sentenced to consecutive sentences. ***Id***. In federal court, Tucker claimed that his original 1942 grand larceny conviction was invalid because it was obtained in violation of his right to counsel. ***Id***. Correspondingly, Tucker argued that if the 1942 conviction was invalid, the recidivist sentence imposed as a result of his 1956 conviction "must necessarily fall with it." ***Id***. Thus, while Tucker's sentences were procedurally connected, and thus "related" because each was either based upon or made consecutive to a prior conviction and sentence, Tucker's convictions were not factually connected, as Wisconsin court's use the phrase for sentence credit purposes. *See* ***State v. Carter***, 2010 WI 77, ¶¶56-57, 327 Wis. 2d 1, 785 N.W.2d 516.

As relevant here, Zastrow was sentenced in 2006 in Winnebago County to four years imprisonment, consisting of two years initial confinement and two years extended supervision. ***Id***., ¶2. Later, Zastrow was sentenced in Outagamie County in five separate and factually distinct cases. ***Id***. Between three consecutive sentences, the court in Outagamie County imposed 11 years initial confinement and 14 years extended supervision, all of which was ordered to be served consecutive to Zastrow's 2006 Winnebago County sentence. ***Id***. In 2008, Zastrow's 2006 Winnebago County sentence was vacated. ***Id***., ¶3. The circuit court subsequently imposed and stayed four years imprisonment and placed Zastrow on probation consecutive to his Outagamie County sentences. ***Id***.

After the Wisconsin Department of Corrections recomputed Zastrow's string of consecutive Outagamie County sentences to begin on the date the Winnebago County sentence was vacated, as opposed to the date of sentencing in Winnebago County, Zastrow moved for postconviction relief. ***Id***., ¶4. The circuit court denied relief. Zastrow argued on appeal that his Outagamie County string of consecutive sentences must begin on the date of sentencing, rather than the date his Winnebago County sentence was vacated. ***Id***., ¶5.

The court of appeals agreed. ***Id***., ¶¶6-8. The court began by noting that as a result of the vacated sentence in Winnebago County, it was as if there had been no Winnebago County sentence to begin with. ***Id***., ¶6. Then, the court relied on Wis. Stat. § 973.15 to note that "[b]ecause the Winnebago County sentence ceased to exist once it was vacated," Zastrow's string of consecutive Outagamie County sentences must commence on the date of sentencing. ***Id***., ¶7. The court went on to note that its conclusion was consistent with "the rule enunciated in *Tucker v. Peyton.*" ***Id***., ¶8.

B. Harrison is entitled to the credit granted by the circuit court.

On December 21, 2011, in the 2007 and 2008 cases, the circuit court sentenced Harrison to concurrent terms of six years imprisonment, consisting of three years initial confinement and three years extended supervision. (85:1). Because the consecutive sentences imposed in the 2010 and 2011 cases have been vacated, Harrison is entitled to credit against the service of the 2007 and 2008 sentences from the date of sentencing, less presentence credit, through his release from prison on January 6, 2017. To deny Harrison this credit would deny him credit against his 2007 and 2008 sentences for time served in custody that was factually connected to the course of conduct for which sentence was imposed. As the circuit court recognized, this is no windfall for Harrison. (85:3-4). Rather, it will result in Harrison serving all or almost all of his six year term of imprisonment *in prison*, contrary to the circuit court's sentence of three years initial confinement and three years extended supervision. (*Id.*).

First, while this is admittedly a unique sentence credit case, the facts here line up with the plain text of the sentence credit statute: "[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 sentence was imposed." Wis. Stat. § 973.155(1)(a). From December 21, 2011, through January 6, 2017, Harrison was confined in prison based on the course of conduct for which sentences were imposed in the 2007 and 2008 cases. There was no other legal basis for Harrison's confinement. (79:1-2, 7-43, 85:3-4). Thus, the circuit court was correct to order the DOC to recalculate Harrison's sentences in these cases to properly account for this confinement. (85:3-4).

Second, a combination of controlling precedent and Wisconsin statutes make clear that Harrison's sentences in the 2007 and 2008 cases continued running "as if there had been no judgment" from the date of sentencing through Harrison's release from prison on January 6, 2017. ***Lamar*** clarifies, to the extent there would be any doubt, that the time Harrison originally spent in prison because of the 2010 and 2010 consecutive sentences has been nullified and voided. 334 Wis. 2d 536, ¶39, n.10. Contrary to the state's argument that the time Harrison spent in prison serving vacated sentences is simply lost or ignored, ***Lamar***, and Wis. Stat. §§ 973.15 and 302.113(4) require this time be credited against Harrison's concurrent sentences in the 2007 and 2008 cases.

Third, the rule from ***Tucker*** and ***Allison***, as recently applied by this court in ***Zastrow***, requires the DOC to credit Harrison's 2007 and 2008 sentences with the time he served in prison from December 21, 2011, through his release from prison on January 6, 2017. *See* ***Allison***, 99 Wis. 2d at 393, ***Zastrow***, No. 2015AP2182, unpublished slip op., ¶¶1, 8. (Def.-Resp. App. 101-102, 105).

Each of these cases recognize the distinction between a rule, on the one hand, that would allow a defendant to "bank" time served on vacated or voided sentences to be used like a "line of credit" against unrelated later sentences and a rule, on the other hand, that requires credit be granted when the service of a defendant's lawfully imposed sentence is delayed based on the service of a subsequently vacated sentence. *See* ***Tucker***, 357 F.2d at 116, *contra* ***Allison***, 99 Wis. 2d at 393 and ***Zastrow***, No. 2015AP2182, unpublished slip op., ¶¶1, 8. (Def.-Resp. App. 101-102, 105).

Thus, in ***Tucker***, the court authorized the advancement of the commencement of the defendant's current sentence to account for the (potentially) invalid previously imposed sentence. 357 F.2d at 118. Likewise, in ***Zastrow***, this court ordered the DOC to re-compute the defendant's sentence because a sentence to which the defendant's relevant sentence was consecutive had been vacated. No. 2015AP2182, unpublished slip op., ¶1 (June 27, 2017). (Def.-Resp. App. 101-102).

In Harrison's case, the only factual distinction is that the vacated 2010 and 2011 sentences were originally ordered to be served consecutive to the 2007 and 2008 sentences. In other words, as the circuit court noted, Harrison had already begun serving the 2007 and 2008 sentences when the 2010 and 2011 sentences were imposed and then vacated. (85:3-4).

Regardless of this distinction, as in ***Tucker*** and ***Zastrow***, the 2010 and 2011 vacated sentences delayed the service of Harrison's sentences, specifically his terms of extended supervision in the 2007 and 2008 cases, and resulted in him serving that time in prison instead of in the community. (85:3-4). In other words, whereas Harrison should have spent three years in custody and three years on extended supervision in connection with the 2007 and 2008 cases, he has now spent all of or close to all of his six year term of imprisonment in prison. As the circuit court rightly recognized, ordering the DOC to credit Harrison with time unlawfully attributed to now-vacated sentences against his 2007 and 2008 sentences is "fundamentally fair." (85:4).

As argued above, the circuit court's decision is also in line with the plain text of the sentence credit statute and other sentencing statutes and is supported by controlling and persuasive precedent.

CONCLUSION

For the reasons stated above, this Court should affirm the circuit court's order regarding sentence credit in Case Nos. 2007CF115 and 2008CF129.

Dated this 9th day of April, 2018.

Respectfully submitted,

JEREMY A. NEWMAN
Assistant State Public Defender
State Bar No. 1084404

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 264-8566
newmanj@opd.wi.gov

Attorney for Defendant-Respondent

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 3,943 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 9th day of April, 2018.

Signed:

JEREMY A. NEWMAN
Assistant State Public Defender
State Bar No. 1084404

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 264-8566
newmanj@opd.wi.gov

Attorney for Defendant-Respondent

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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 9th day of April, 2018.

Signed:

JEREMY A. NEWMAN
Assistant State Public Defender
State Bar No. 1084404
newmanj@opd.wi.gov

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 264-8566

Attorneys for Defendant-Respondent