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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Case Nos. 2019AP000912 and 2019AP000913

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

CAMRON SPENCER,

Defendant-Appellant.

ON NOTICE OF APPEAL FROM ORDERS DENYING A MOTION FOR ADDITIONAL SENTENCE CREDIT AND A MOTION FOR RECONSIDERATION, ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT BRANCH 2, THE HONORABLE MICHAEL HANRAHAN PRESIDING, ON APRIL 1, 2019 AND APRIL 24, 2019, RESPECTIVELY

BRIEF AND SUPPLEMENTAL APPENDIX OF
PLAINTIFF-RESPONDENT

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 PLAINTIFF-RESPONDENT

STATEMENT OF THE ISSUE

Is Spencer entitled to 179 days of additional credit against misdemeanor sentences imposed in Milwaukee County Circuit Court cases 16CF003383 and 17CF001033, for a period when he was released on bond in those cases, but held in custody on state bond or on a federal hold for new and unrelated charges of felon in possession and bail jumping in 17CF002670, which were later dismissed in favor of a federal indictment?

Trial court answered: No: because the custody in 17CF002670 was unrelated to the course of conduct for which the misdemeanor sentences were imposed, Spencer was not entitled to credit for that period.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. This case can be resolved by applying well-established legal principles to the facts of the case and, as a misdemeanor matter decided by a single judge, will not meet the criteria for publication. See Wis. Stats. (Rule) 809.22(2) and 809.23(1)(b).

STATEMENT OF THE CASE

On July 29, 2016, Camron Spencer was charged with three counts in Milwaukee County Circuit Court case 16CF003383: Strangulation and Suffocation, contrary to Wis. Stat. § 940.235(1); Battery, contrary to Wis. Stat. § 940.19(1); and Disorderly Conduct, contrary to Wis. Stat. § 947.01(1). (R1)¹ All of the counts invoked the habitual criminality enhancer; all were alleged to be crimes of domestic abuse; all related to conduct committed by Spencer on July 27, 2016 against, or in the presence of, L.M.B., at a particular location in Milwaukee. (*Id.*)

In relevant portion, the complaint alleged that L.M.B. reported that she and Spencer have a child in common and that she and Spencer got into an argument on July 27, 2017 regarding Spencer's relationship with another woman. (*Id.*) L.M.B reported that during the argument, Spencer repeatedly punched her in the face, threatened to kill her, and pushed her against a wall and choked her with one hand as he covered her mouth and nose with the other; then, after she was able to

¹ References to the record in this consolidated appeal will be as follows: references to the appellate record in 2019AP000912 will be given as "R" followed by the record citation (e.g., R2:1). References to the record in 2019AP000913 will be given as "913R" followed by the record citation (e.g., 913R2:1). Unless necessary to do otherwise, where items appear in both records, the State will refer only to the record in 2019AP000912 (as R).

run into a bathroom and lock the door, Spencer began kicking the door, while holding their one year old child. (*Id.*) In support of habitual criminality allegation, the complaint alleged that Spencer had been convicted of the federal offense of Unlawful Transport of Firearms, in violation of 18 USC §922(g) on February 12, 2013, receiving a sentence of 36 months imprisonment and 36 months of supervised release. (*Id.*) Spencer was on federal supervised release for that conviction, in Case 12-CR154 (E.D. Wis.), at the time and throughout the prosecution of 16CF003383. (R37:1-2)

The court authorized a warrant for Spencer's arrest on those charges, (R2), and he was arrested on October 31, 2016.² (R3)

At Spencer's initial appearance on November 1, 2016, Commissioner Grace Flynn set bail at \$10,000, and ordered conditions of release which included that Spencer have no contact with L.M.B. (R5; 913R1:5) and that he be subject to electronic monitoring. (R4; 913R1:5) The case was assigned to Milwaukee County Circuit Court Branch 24, the Honorable Judge Protasiewicz, presiding. (913R:1:5)

On November 10, 2016, Spencer entered a speedy trial demand. Judge Protasiewicz scheduled the matter for final pre-trial on December 6, 2016 and jury trial on January 4, 2017. (R7; 913R1:6) The hearings were later reset to February 6, 2017 and February 27, respectively. (913R:1:7) In the interim, on December 5, 2016, the court received a letter from L.M.B., asking that the charges be dropped. (R8) The court took no action on the letter. (913R1:6)

Spencer remained in custody on the cash bond previously ordered until February 6, 2017. On that date, consistent with the time limits of the speedy trial demand, the court modified the \$10,000 cash bail to a \$2500 signature bond, subject to all of the conditions previously set. (913R1:7)

While Spencer was in custody, investigators

² In other parts of the record, the parties reported that the arrest occurred on October 30. See, *e.g.*, R28; R44:9, App. 107.

discovered phone calls placed from the jail to L.M.B on November 21, 2016 and November 23, 2016, which appeared to be from Spencer. (913R1:2) When investigators met with L.M.B. on February 8, 2017, she identified Spencer's voice on the calls and confirmed that he had pressured write the letter to the court in which she had indicated that she didn't want to proceed with the case. (913R1:2-3)

A federal hold was lodged against Spencer the next day, on February 9; it remained in place until March 29, 2017. (R37:1)

On February 28, 2017, Spencer was charged in Milwaukee County Circuit Court case 17CF001033, with one count of felony intimidation of a victim, contrary to Wis. Stat. § 940.43(7), and two counts of misdemeanor intimidation of a victim, contrary to Wis. Stat. § 940.44(2). (913R1) All three charges related to the phone calls from Spencer to L.M.B.; all three invoked the habitual criminality enhancer; L.M.B was the victim in all three; and, again, all three were alleged to be crimes of domestic abuse. (*Id.*)

Spencer remained in custody until April 18, 2017, at which time he was released on bail in both 16CF003383 and 17CF001033, subject to several conditions, including GPS monitoring by Justice Point. (R18; R44:9, App. 107)

On June 2, 2017, Spencer was arrested for a new felon in possession of a firearm offense, which was alleged to have occurred that same date. (R22; R44:8-9, App. 106-107; R37:1) He was charged, initially, with felon in possession of a firearm and bail jumping in Milwaukee County Circuit Court case 17CF002670. (R22; R39:1-2; R40) The record in this matter does not reflect what bail was ordered in 17CF002670; but, at some point, a federal hold was lodged against him, and he remained in custody for that case. (R44:8, App. 106; R38) The US Attorney's Office subsequently indicted Spencer for the conduct in 17CF002670 in 17-CR157 (E.D. Wis.), and on October 4, 2017, the charges in 17CF002670 were dismissed in favor of the indictment. (R38)

Spencer resolved the charges in 16CF003383 and 17CF001033 on November 27, 2017. Appearing before the Honorable Judge Michael Hanrahan, Spencer pled guilty to the domestic violence-related misdemeanor battery as a habitual criminal in 16CF003383, and one count of domestic violence-related misdemeanor intimidation of a victim, as a habitual criminal in 17CF001033; the remaining counts in both files were dismissed and read-in. (R:32; 913R13) At the time, the signature bond in 16CF003383 and the cash bond posted in 17CF001033 remained in effect (R38; R44:9, App. 107), but Spencer was in custody, being held at the Waukesha County jail, as a result of the pending federal charge. (*Id.*; R24; R25; R37:1)

At sentencing on November 28, 2017, Spencer sought pre-trial incarceration credit for two periods: from October 30, 2016 until April 18, 2017; and from June 2, 2017 through the sentencing date. (R:44:9; App 107) Spencer's attorney described those periods as, "the initial period of confinement, bail was posted, and a subsequent period of confinement because of the intimidation charges." (*Id.*) The State objected to the second period, arguing that the second time in custody related to the new felon in possession of a firearm charge, not to conduct related to the charges involving L.M.B. (R44:8, 13; App. 106, 111)

After hearing argument, for the enhanced battery charge in 16CF003383, Judge Hanrahan sentenced Spencer to two years in the Wisconsin state prison system, bifurcated as 12 months initial confinement and 12 months extended supervision (R32:1). The court granted stipulated pre-trial credit of 170 days, which represented the period from Spencer's arrest in 2016 until his release on bond in April of 2017. (*Id.*, R44:14; App. 112) Judge Hanrahan determined that the court would sort out at a later point what credit, if any, Spencer was due following his arrest on June 2. (R44:14; App. 112). In 17CF001033, Spencer was sentenced to serve to 90 days in the House of Corrections, consecutive, with no pre-trial credit. (913R12)

On March 8, 2019, Spencer filed a "Motion to Dismiss Detainer," which--read broadly--was a motion for the additional 179 days of sentence credit. (R35) Spencer

supplemented that on March 21 with a document or series of documents which the court labeled, “Information Provided by Defendant Regarding Federal Custody. (R37:1-5) The first three pages appear to be Federal Bureau of Prison sentence computation data relating to Spencer’s federal cases (R37:1-3; App. 101-103). The last two essentially comprise a motion for the unawarded 179 days of sentence credit.

The first page of those sentence computation data sheets is labeled “Public Information Inmate Data as of 05-18-2018.” (R37:1; App. 101) It bears page number marking, “DSCFX Page 003” in the upper left hand corner and is dated 05-18-2018. It reflects two sentencing matters: a “current obligation,” labeled “Current Obligation No. 10,” which is a federal sentence of 30 months in prison and 2 years supervised release for an offense which occurred on June 2, 2017; and sentence computation for “judgments warrants and obligations” “020, 020,010, 030 010.” There follows a list of jail credit:

From Date	To Date
03-01-2016	03-03-2016
02-09-2017	03-29-2017
10-06-2017	02-01-2018

(*Id.*)

The second page of the computation sheets is labeled “Sentence Monitoring Computation Data as of 12-18-2018,” bears the page number marking “GILAW Page 001” and is dated 12-18-2018. (R37:2; App. 102) It reflects a “release audit” for three federal matters:

- An entry labeled “current judgment / Warrant No. 020,” which reflects Spencer’s revocation from supervised release in case 12-CR-156 and a non-committed \$100.00 penalty assessment
- An entry labeled “Current obligation No. 010,” which reflects a sentence impose of 12 months for a violation of supervised release which had been ordered as a result of a conviction on June 4, 2012; and
- An entry labeled, “Current Judgment / Warrant No. 30,” which lists only a court (Wisconsin, Eastern

District), a case number 17-CR-157, and a judge (Adelman).

The third page, labeled “DSCFX Page 004” and also dated 05-18-2018, (R37:3; App. 103), reflects “prior credit time” of 171 days and projects a future release date.

Judge Hanrahan denied the Motion to Dismiss the Detainer by written order dated April 1 2019 (R38; App. 104) Judge Hanrahan found

The defendant was “free” on bond on these cases during the period of June 2, 2017 to November 28, 2017 but asserts he was in federal custody during this period. It appears that this custody was in connection with the offense charged as case 17CF002670 with the filing of a complaint on June 2, 2017, which was dismissed on the prosecutor’s motion on October 4, 2017 after the defendant was federally indicted under case 17-CR-157 for the same offense. While the defendant has provided documentation which indicates that he did not receive credit towards his federal sentence from June 2, 2017 to October 4, 2017, the defendant is obliged to petition the federal courts for custody credit for this period. The defendant is not entitled to credit in cases 16CF003383 and 17CF0001033 for custody that was unrelated to the conduct for which the court imposed its sentences. See section 973.155(1)(a), Stats.

On April 12, 2019, Spencer moved the court for reconsideration, arguing that he had not been free on bond in the 16CF003383 and 17CF0001033 from June 2, 2017 onward, because he was being held on a bail jumping charge in 17CF002670 which was related to those cases, and because federal authorities would not grant him credit for the time he was held on the federal hold. (R39)

Judge Hanrahan denied that motion by written order, dated April 24, 2019. (R40, App. 105) He found that—whether or not the federal court would award him credit for time spent on a federal hold—Spencer was not entitled to

sentence additional sentence credit in 16CF003383 and 17CF001003, because during the relevant period, Spencer was not in custody in connection with his sentences in 16CF003383 and 17CF001003. (*Id.*) Instead,

He was in custody in connection with case 17CF002670, which was dismissed when the defendant was federally indicted for the same course of conduct in 17-CR-157. As the court explained in its prior decision, the defendant is not entitled to credit in these cases for conduct that was unrelated to the course of conduct for which the sentence was imposed.

(*Id.*)

Spencer moved for reconsideration a second time on April 25, 2019 (R41). The court took no action on that motion.

This appeal follows.

STANDARD OF REVIEW

Sentence credit in Wisconsin is governed by Wis. Stat. § 973.155. Statutory interpretation and the application of a statute to a particular set of facts are questions of law that this court reviews independently. *See State v. Hintz*, 2007 WI App 113, ¶5, 300 Wis. 2d 583, 731 N.W.2d 646; *State v. Johnson*, 2009 WI 57, ¶ 22, 318 Wis. 2d 21, 32, 767 N.W.2d 207, 211. In so doing, however, this court will uphold any factual findings made by the circuit court unless they are clearly erroneous. *Id.*

ARGUMENT

SPENCER IS NOT ENTITLED TO CREDIT AGAINST THE SENTENCES IN 16CF003383 AND 17CF001033 FOR TIME SPENT IN CUSTODY FROM JUNE 2, 2017 THROUGH NOVEMBER 28, 2017, BECAUSE THE CUSTODY WAS NOT IN CONNECTION WITH THE COURSE OF CONDUCT FOR WHICH THOSE SENTENCES WERE IMPOSED

Wis. Stat. § 973.155(1)(a) provides, in relevant part,

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.

In calculating whether an offender is entitled to a particular amount of sentence credit under the statute, a court must make two determinations: (1) whether the offender was “in custody” within the meaning of Wis. Stat. § 973.155(1)(a); and (2) whether all or part of the custody for which sentence credit is sought was “in connection with the course of conduct for which sentence was imposed.” *State v. Johnson*, 318 Wis. 2d 21, ¶ 27, 767 N.W.2d 207.

To qualify as time spent “in connection with” the course of conduct giving rise to a sentence, a period of custody must be “factually connected with the course of conduct for which sentence was imposed.” *State v. Johnson*, 318 Wis. 2d 21, ¶ 3, 767 N.W.2d 207. “[A] mere procedural connection will not suffice.” *Id.*, ¶ 33. The term “course of conduct,” in turn, refers to the specific offense or acts embodied in the charge for which the defendant is being sentenced. See *State v. Tuescher*, 226 Wis. 2d 465, 471-72, 595 N.W.2d 443, 446 (Ct. App. 1999).

Here, there is no dispute that Spencer was in custody from June 2, 2017 to November 28, 2017: he has asserted, and the post-conviction court found, that he was in federal custody during that period. (R38; App. 104) The question is whether that period of custody was served “in connection with the conduct” he engaged in against L.M.B. on July 27, 2016, or the intimidation of her that he undertook on November 21 and 23, 2016, for which the sentences in 16CF003383 and 17CF001033 were imposed. The only reasonable interpretation is that it was not.

From April 18, 2017 through November 28, 2017, Spencer was actually at liberty in 16CF003383 and 17CF001033. He had been released on a signature bond in 16CF003383 and on some bail in 17CF001033 on April 18,

2017. (913R1:7; R18) Those bail orders remained in effect, unrevoked, through sentencing and were not the reason he remained in custody until sentencing. (R44:9, 13, App. 107, 111; R38)

Instead, the conduct which brought Spencer into custody in June of 2017 was unrelated to the course of conduct for which he was sentenced in 16CF003383 and 17CF001033. The course of conduct for which Spencer was sentenced on November 28, 2017, related to the acts of violence he committed against L.M.B., in July of 2016, and the intimidation he engaged in in November of 2016, as set forth in 16CF003383 and 17CF001033. (R1; 913R1; R44:4-7) In contrast, the disputed period of custody began on June 2, 2017, with Spencer's arrest a new felon in possession of a firearm charge. (R38) That offense occurred over 6 months after the most recent intimidation charge, and—obviously—involved the possession of a gun, rather than an act directed against L.M.B. (R28; R37:1) Nothing suggests that that offense was remotely factually connected to the crimes Spencer had committed against L.M.B the year before.

At sentencing, Spencer's attorney asserted that the time in custody from June 2 on was a result of the intimidation charge. (R44:9, App. 107) The record does not support this claim: the intimidation charge came to light on February 8, 2017, and a federal hold was lodged against him the next day. (913R1; R37:1) It is reasonable to infer that February 9 hold related to that newly reported intimidation. That hold, however, was lifted on March 27, and nothing in the record suggests that any additional pre-trial custody resulted from the those allegations after Spencer's release on April 18, 2017. In fact, Judge Hanrahan implicitly rejected that claim, by finding that the disputed period related to the felon in possession of a firearm offense filed in 17CF002670. (R38; R40) Given that Spencer was taken into custody on June 2 for a new offense which occurred on June 2, and which later led to a federal conviction, that finding is not clearly erroneous.

Post-conviction, Spencer asserted that he was not really "free on bond," in 16CF003383 and 17CF001033 after June 2, notwithstanding that bond in those cases had been

posted, because the case which held him in custody included a bail jumping charge premised on 16CF003383 and 17CF001033. (R:39) To the extent that Spencer asserts that any custody associated with the bail jumping charge was by definition “in connection with” and factually connected with the offenses in 16CF003383 and 17CF001033, because the bail jumping was predicated on the bond in those cases, his claim is defeated by *State v. Beiersdorf*, 208 Wis. 2d 492, 561 N.W.2d 749 (Ct. App. 1997).

Beiersdorf was charged with second degree assault of a child. He was released a personal recognizance bond at his initial appearance and later pled guilty to that charge. Sentencing was adjourned. *Beiersdorf*, 208 Wis. 2d at 494-495, 561 N.W.2d at 751. While the matter was pending sentencing, Beiersdorf was charged with bail jumping and two misdemeanor counts of sexual intercourse with a child over the age of sixteen. Bail was set at \$10,000 cash, and he remained in custody, unable to post that amount. *Beiersdorf*, 208 Wis. 2d at 495, 561 N.W.2d at 751. Beiersdorf later pled guilty to the bail jumping charge, and the two misdemeanors were dismissed. *Id.* At sentencing, the court ordered Beiersdorf to serve ten years in prison for the sexual assault; and five years in prison, stayed in favor of five years of probation, consecutive, on the bail jumping charge. The court granted forty-four days pre-trial credit against the bail jumping charge, for the time he remained in custody between his arrest on the second case and sentencing. *Id.*

Postconviction, Beiersdorf argued that the forty-four days of credit should have been applied against the imposed sexual assault sentence. The trial court denied the motion, concluding that Beiersdorf was not entitled to credit on the sexual assault offense because he had been released on bond on that charge and, therefore, was not “in custody in connection with” the sexual assault offense. *Beiersdorf*, 208 Wis. 2d at 496, 561 N.W.2d at 751.

The appellate court agreed, finding that § 973.155(1)(a) provides sentence credit only for the custody connected to the charges to which the custody was specifically linked. The court wrote,

Therefore, although § 973.155(1)(a), Stats., also refers to “confinement related to an offense for which the offender is ultimately sentenced,” and although in rather obvious ways Beiersdorf’s bail jumping was figuratively “related to” his second-degree sexual assault, his “custody” literally was not “confinement related to” the sexual assault for purposes of sentence credit under § 973.155(1)(a), Stats. Although a defendant may perceive that custody is “at least partly ‘in connection with’” another crime, that does not mean that the custody, for credit purposes, is related to “the course of conduct for which sentence was imposed.”

Accordingly, we conclude that because Beiersdorf posted a personal recognizance bond on the felony sexual assault charge and remained on that bond until his sentencing, and because he was in custody on cash bail only on the subsequent bail jumping and sexual intercourse charges, the forty-four days in custody, under § 973.155(1)(a), Stats., was “custody” only “in connection with the course of conduct for which sentence was imposed” and stayed on the bail jumping

Beiersdorf, 208 Wis. 2d at 498–99, 561 N.W.2d at 752. (internal citations omitted)

Like Beiersdorf, Spencer was released on bond in 16CF003383 and 17CF001033; like Beiersdorf, he was charged with multiple new offenses, including bail jumping before sentencing; and, like Beiersdorf, his posted bonds neither lapsed nor were revoked, and he remained in custody only because of the new charges. Under *Beiersdorf*, then, although the bail jumping charge in 17CF002670 was related to the charges in 16CF003383 and 17CF001033, Spencer’s custody for those new charges “literally was not confinement related to” the offenses for which he was on bail, for purposes of sentence credit under Wis. Stats. § 973.155(1)(a).

As a final matter, the State notes that Spencer’s assertion that he did not receive credit against his federal sentence(s) for the period of June 2, 2017 through November

28, 2018, does not appear to be entirely correct. First, the documents he submitted in support of his motion to dismiss the detainer (R37:1-3) do not appear to be complete. Based on the page numbering and the notation “more to follow” which appears at the bottom of each page, it is reasonable to believe that additional records may exist. Assuming, however, that the data in the records is complete, even if the pages may not be, the Public Information Inmate Data sheet Spencer filed (R37:1) reflects that he was awarded credit for the period from October 6, 2017 through February 1, 2018: 54 of the 179 days he seeks. That document also reflects that Spencer was granted credit against his federal sentence for time in custody from February 9, 2017 through March 29, 2017: a period of 49 days for which he for which he previously been awarded credit against the sentence in 16CF003383. (R18:1; R44:29) Because double credit is not permitted in consecutive sentences, *State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988), were Spencer entitled to additional sentence credit—which the State disputes, as set forth herein—it is the State’s position that he would be entitled to no more than 68 days.

CONCLUSION

For the foregoing reasons, the State requests that the court affirm the circuit court’s decision and order denying additional sentence credit.

Dated this _____ day of November, 2019

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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 3869.

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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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 § 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 _____ day of November, 2019.

Karen Loebel
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