STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT III

Case No. 2020AP1936-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JOSEPH L. SLATER,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING SENTENCE CREDIT ENTERED IN MARATHON COUNTY CIRCUIT COURT THE HONORABLE MICHAEL K. MORAN, PRESIDING

BRIEF AND SUPPLEMENTAL APPENDIX OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

Slater seeks three years of additional custody credit against his current sentence. Under *Beets,*[1] time spent in custody serving a sentence may not be credited toward another sentence. Dual credit is available only on concurrent sentences.[2]

At Slater's 2005 sentencing, the court and the parties treated three years of custody Slater spent in county jail while his present case was pending as time spent in service of a revocation sentence. Now, Slater argues that, for this entire three-year period, he was merely awaiting transfer to a state prison to serve the revocation sentence, citing Wis. Stat. § 973.10(2)(b) and *Davis*.[3] Therefore, he argues, he is entitled to credit for this time against his present sentence.

The credit award Slater seeks would amount to dual credit. If Slater is correct that the revocation sentence was not served until he entered into a state prison, Slater would, of course, be entitled to credit for this jail custody against the revocation sentence, too.

1. Is Slater entitled to dual credit for this custody period?

The circuit court answered: No.

This Court should answer: No.

Slater's argument for credit challenges the sentencing court's determination that he served his revocation sentence while confined in the county jail. Based on this determination,

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[1] *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985).

[2] *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988).

[3] *State v. Davis*, 2017 WI App 55, 377 Wis. 2d 678, 901 N.W.2d 488.

the court did not award credit for three years of Slater's jail custody. But this alleged error was induced by the parties' stipulation regarding sentence credit, which included the State's representation that Slater served his revocation sentence in the jail.

2. Where Slater induced the court's alleged error by this stipulation, should he be heard to complain of that error in seeking additional credit?

The circuit court did not address this issue.

This Court should answer: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiff-Respondent State of Wisconsin does not request oral argument or publication. The parties' briefs adequately develop the law and facts necessary for disposition of the appeal.

INTRODUCTION

In 2002, while the present case was pending, Slater's probation was revoked in another case, and a revocation sentence of three years was imposed. Slater remained in county jail custody for three and one-half years until sentencing in the present case in 2005.

At Slater's 2005 sentencing in the present case, the State explained that the three years of Slater's pretrial custody in the county jail was spent in service of the probation revocation sentence. Thus, the State asserted that Slater was entitled to 164 days of credit for jail custody not spent in service of the revocation sentence. Defense counsel said that he agreed with these calculations, and the court summarily ordered 164 days of credit without discussion. With this understanding, the circuit court then sentenced Slater to three concurrent terms of imprisonment in the present case.

Now, Slater seeks to upend the circuit court's sentencing structure, arguing that he is entitled to credit toward his sentence for the three years jail custody previously counted as service of his revocation sentence. Slater maintains that the court erred in determining that he served his revocation sentence in jail because Wis. Stat. § 973.10(2)(b) provides that a sentence upon revocation of probation begins on the date the offender enters prison, and that he is entitled to credit for this time under *Davis*.

Slater is not entitled to the additional credit he seeks for two reasons. First, an award of credit in this instance would amount to dual credit, which is not available here because the sentencing court plainly did not intend for Slater's confinement on the current sentence to be served concurrently with the revocation sentence. Second, Slater induced the alleged error of which he complains by stipulating to the State's credit recommendation at sentencing and acquiescing to the State's position that Slater's revocation sentence was served while he was in the county jail. Accordingly, this Court should affirm the circuit court's order denying Slater's request for additional sentence credit.

STATEMENT OF THE CASE

Underlying charges.

In Marathon County Case No. 2000CF583, the State charged Slater with felony possession with intent to distribute cocaine (less than 5 grams), and misdemeanor possession of THC. (R. 3:18, 20.) Slater pleaded guilty to the charges, and the circuit court, the Honorable Vincent K. Howard, presiding, imposed and stayed a three-year prison sentence followed by ten years of extended supervision. Instead, the court ordered that Slater serve an eight-year term of probation on the cocaine distribution count, with a concurrent two-year term of probation on the possession of THC count. (R. 3:18, 20.)

While he was serving these terms of probation in 2000CF583, in February 2002, Slater was charged with three counts of armed robbery-threat of force as party to a crime in 2002CF149, the case underlying this appeal. (R. 3:1–2; 254:7.) The charges were for robbing the Chatterbox bar and two of its patrons with a handgun. (R. 254:7.) Slater was arrested, and his probation agent placed a hold on him on February 20, 2002. (R. 213:1.)

On June 7, 2002, Slater appeared before Judge Howard, in 2000CF583 and his probation was ordered revoked.[4] At that hearing,[5] the parties argued about the proper length of revocation sentence for the misdemeanor possession of THC count, while noting that cocaine distribution count involved an "imposed and stayed sentence" consisting of the previously established three years of initial confinement followed by ten years of extended supervision. (R-App. 103.) The State asked that the court impose an additional nine months in the county jail consecutive to the three years of initial confinement Slater was to serve on account of the revocation of his probation in order to "cover all the misdemeanors." (R-App. 104.) Indicating that it could have asked for 33 months' additional jail time for both cases, the State indicated that it declined to ask for more time on the misdemeanors because Slater "ha[d] bigger problems ahead of him" as Slater was still awaiting

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[4] The State obtains this information from CCAP records in Marathon County case 2000CF583, available at: https://wcca.wicourts.gov/caseDetail.html?caseNo=2000CF000583&countyNo=37&mode=details#records (last accessed April 15, 2021.) This Court may take judicial notice of CCAP records. *Mercado v. GE Money Bank*, 2009 WI App 73, ¶ 5 n.3, 318 Wis. 2d 216, 768 N.W.2d 53

[5] The transcript of Slater's sentencing after revocation hearing in Marathon County case nos. 2000CM870, 2000CM1782 and 2000CF583 is not part of the appellate record, but the State obtained a copy. (R-App. 101–10.)

trial on the armed robbery charges in 2002CF149. (R-App. 104–05.)

The court imposed an additional 12 months of jail time to be served consecutively to the three-year prison term which had already been imposed and stayed. (R-App. 106–07.) Addressing sentence credit against the new armed robbery charges, the State argued that sentence credit "wouldn't apply to . . . the later case." (R-App. 108.) The circuit court concurred, concluding that Slater "only can get credit once. So —if you take credit in one case, you can't take it in another." (R-App. 108.)

From this revocation sentencing on June 7, 2002 until his August 1, 2005 sentencing, Slater remained in the Marathon County jail awaiting resolution of the armed robbery charges in the underlying case—2002CF149. (R. 258:4, 6–7.) In March 2005, the jury found Slater guilty on all three counts of armed robbery. (R. 254:3.) On August 1, 2005, the circuit court sentenced Slater in 2002CF149. (R. 254.)

The State argued that Slater was already on "felony probation status" in 2000CF583, and thus when he decided to rob the Chatterbox, Slater had an "imposed and stayed prison sentence, 13-year prison sentence hanging over his head, with three years set as initial confinement and ten years [of extended supervision]." (R. 254:13.) The State asserted that Slater "ha[d] served three years on his probation revocation [in case 2000CF583]" in the county jail from June 7, 2002 to June 7, 2005. (R. 254:6.) The State asserted that Slater was due 164 days of sentence credit for jail custody not spent in satisfaction of the three-year revocation sentence. (R. 254:6.)

Following the State's statements about Slater having served his three-year revocation sentence in the county jail and being due only 164 days of credit, the court asked defense counsel, "[D]o you have a position on that?" (R. 254:6.) In response, counsel indicated that the defense agreed with the

State's position: "I have no objection to that calculation, your Honor." (R. 254:6.)

The circuit court sentenced Slater to three, 30-year terms of imprisonment consisting of 20 years of initial confinement followed by 10 years of extended supervision, to be served concurrently. (R. 254:25–26.) The court ordered that Slater receive 164 days credit for time served against this sentence as requested by the State. (R. 254:29.) The court also ordered that Slater be transported to Dodge Correctional Institution as the "reception site into the prison system." (R. 254:29.)

Postconviction proceedings.

Following an unsuccessful direct appeal in 2006AP2350 and several non-relevant postconviction motions in subsequent years, in July 2020, Slater filed the motion for sentence credit underlying this appeal. (R. 213.) Slater's motion sought (1) 164 days of sentence credit to account for postconviction but presentencing time in Marathon County jail, and (2) 1096 days (or three years plus one leap year day) to account for the period of time from June 7, 2002 (when Slater's probation was revoked in 2000CF583) to August 1, 2005 (when Slater was apparently transported from Marathon County jail to Dodge Correctional Institution) following his conviction in 2002CF149. (R. 213:1.)

As relevant here, Slater's motion sought credit on the second category under Wis. Stat. § 973.10(2)(b). (R. 213:4.) That statute directs a court if an offender's probation is revoked and "[they] ha[ve] already been sentenced, [to] order the probationer to prison, and the term of the sentence shall begin on the date that the probationer enters the prison." Wis. Stat. § 973.10(2)(b). Thus, Slater argued that because he was "not actually received into the prison system until after he was sentenced in this case" on August 1, 2005, he was therefore also entitled to sentence credit against the armed

robbery sentences for the three years he spent awaiting resolution of those charges. (R. 213:1, 3.)

Slater relied upon this Court's decision in *State v. Davis*, 2017 WI App 55, 377 Wis. 2d 678, 901 N.W.2d 488, in which this Court held that an offender whose supervision had been revoked for committing a new crime and is sentenced to concurrent terms of imprisonment on both is "entitled to sentence credit for custody served from the date of the arrest to either the date of sentencing on the new crime or the date of transfer to prison, whichever occurs first." *Davis*, 377 Wis. 2d 678, ¶ 9. In reaching its decision, this Court relied on the language in Wis. Stat. § 304.072(4), which states that a "sentence of a revoked parolee or person on extended supervision resumes running on the day he or she is received at a correctional institution . . . pending revocation according to the terms of [Wis. Stat. §] 973.155." *Id.* ¶ 10. Slater argued that the circuit court should interpret Wis. Stat. § 973.10(2)(b) in the same fashion. (R. 213:3.)

The circuit court, the Honorable Michael K. Moran, presiding, held a hearing on Slater's motion. (R. 258.) The court explained that it was trying to determine if the holding of *Davis* applies to a situation like Slater's "where there is not a reincarceration to prison such as an ES or parole revocation, that the *Davis* case would necessarily allow for this type of credit." (R. 258:2.) The State agreed, arguing that Slater was not entitled to credit for time served while on probation because "there is a substantial difference between probation, which is not a sentence, and extended supervision and parole, which is part of a prison sentence." (R. 258:4.) Slater, represented by present counsel, agreed but noted that Wis. Stat. § 973.10(2)(b) states that a probationer's sentence credit begins to run "when they're received in prison." (R. 258:7.) Slater acknowledged that, "[t]ypically someone doesn't sit for 3 years after revocation [of their probation] in the county jail but that is what happened here." (R. 258:7–8.) The circuit

court responded that it too did not "understand why that happened or how that happened." (R. 258:8.) The court set the matter over to further research and assess Slater's motion. (R. 258:8.)

Following the set-over, the circuit court denied Slater's motion for sentence credit. (R. 259:6.) The court observed that Slater "was on probation with an imposed and stayed sentence" before he was charged with the three counts of armed robbery for robbing in the 2002CF149 case. (R. 259:4.) Slater was then "revoked on that imposed and stayed probation, and instead of going to an institution at that time he remained in the Marathon County Jail for approximately 1,200 plus days awaiting resolution of th[at] new case." (R. 259:4.) The circuit court explained that while Slater's argument was "very interesting" and a "difficult" argument, the court could "find no cases that suggest[s] that this would be more like a parole or extended supervision case, which I would term more of re-incarceration case." (R. 259:5–6.) The Court concluded that it could not "under the law, find a way to [give Slater this credit]." (R. 259:6.)

Slater appeals. (R. 231.)

ARGUMENT

Slater is not entitled to an additional three years of credit against his sentence in this case.

A. An offender is entitled to credit for all days spent in custody in connection with the course of conduct for which sentence was imposed but is only entitled to dual credit if the sentences are concurrent.

"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). A petitioner seeking

additional credit after sentencing bears the burden of proving that (1) he or she was "in custody" during the period at issue; and (2) the custody was "in connection with the course of conduct for which sentence was imposed." *State v. Zahurones*, 2019 WI App 57, ¶ 13, 389 Wis. 2d 69, 934 N.W.2d 905 (citation omitted); *see also State v. Presley*, 2006 WI App 82, ¶ 6, 292 Wis. 2d 734, 715 N.W.2d 713.

If a defendant satisfies the two requirements, then "[c]redit is given for custody while awaiting trial, while being tried, and while awaiting sentencing after trial." *State v. Johnson*, 2007 WI 107, ¶ 4 n.2, 304 Wis. 2d 318, 735 N.W.2d 505 (citing Wis. Stat. § 973.155(1)(a)1., 2., and 3.); *see also State v. Beets*, 124 Wis. 2d 372, 377, 369 N.W.2d 382 (1985). The defendant seeking sentence credit "has the burden of demonstrating both 'custody' and its connection with the course of conduct for which the Wisconsin sentence was imposed." *State v. Carter*, 2010 WI 77, ¶ 11, 327 Wis. 2d 1, 785 N.W.2d 516; *State v. Villalobos*, 196 Wis. 2d 141, 148, 537 N.W.2d 139 (Ct. App. 1995).

Dual credit is prohibited for consecutive sentences.

In *State v. Boettcher*, the supreme court construed Wis. Stat. § 973.155 to prohibit "dual credit" for pretrial custody on nonconcurrent sentences. *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988). In such cases, "custody credits should be applied in a mathematically linear fashion." *Id.* at 100. "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.*

Credit is not available for custody time spent in service of another sentence. *See Beets*, 124 Wis. 2d at 383. ("[S]entencing on one charge severs the connection between the custody and the pending charges.") When an offender commits a new crime while on probation, and the court ultimately imposes concurrent sentences on the revocation of

probation and the new conviction, dual credit is available for pretrial custody up until the time the offender is sentenced on either of the sentences. *Presley*, 292 Wis. 2d 734, ¶ 15.

But dual credit is "'not permitted' where a defendant has already received credit against a sentence which has been, or will be, separately served." *State v. Jackson*, 2000 WI App 41, ¶ 19, 233 Wis. 2d 231, 607 N.W.2d 338 (citation omitted). Stated another way, "'dual credit' . . . will be granted only for sentences which are *concurrent*." *State v. Rohl*, 160 Wis. 2d 325, 330, 466 N.W.2d 208 (Ct. App. 1991) (citation omitted). This Court has specifically held that, during the period in which a defendant is confined under a new charge and a probation hold, the defendant will be entitled to credit against his eventual sentence on the new charge as well as the revocation sentence only if the sentences are made concurrent. *State v. Hintz*, 2007 WI App 113, ¶ 12, 300 Wis. 2d 583, 731 N.W.2d 646.

In *Davis*, this Court held that "when an offender is revoked from supervision for committing a new crime and there is no reconfinement hearing on the revocation, and the offender is sentenced to concurrent terms on both the revocation sentence and the sentence for the new crime," sentence credit is available "for custody served from the date of arrest to either the date of sentencing on the new crime or the date of transfer to prison, whichever occurs first." *Davis*, 377 Wis. 2d 678, ¶ 9.

This Court based its conclusion, in part, on Wis. Stat. § 304.072(4), which provides that "sentence of a revoked parolee or person on extended supervision resumes running on the day he or she is received at a correctional institution." Similarly, Wis. Stat. § 973.10(2)(b) provides that, when an offender's probation is revoked and sentence has already been imposed, the Department of Corrections must "order the probationer to prison, and the term of the sentence shall begin on the date the probationer enters the prison." Whether a

defendant is entitled to sentence credit under the statute is a question of law that this Court reviews de novo. *Johnson*, 304 Wis. 2d 318, ¶ 27.

B. Even if Slater were correct that *Davis* and Wis. Stat. § 973.10(2)(b) apply, he is not entitled to additional credit because Slater induced the alleged court error on which his request for additional credit is based.

As detailed above, at his 2005 sentencing, Slater did not dispute that three years he was in the county jail while his present case was pending was spent in service of his revocation sentence. (R. 254:6.) Thus, it appears that the court thus treated the revocation sentence as already completed and imposed a sentence with a confinement period that was understood to be served separately from the revocation sentence.

Now, Slater argues that he was merely awaiting transfer to state prison to serve the revocation sentence during this three-year period, citing Wis. Stat. § 973.10(2)(b) and *Davis*. (Slater's Br. 1.) Therefore, he argues, he is entitled to credit for this time against his present sentence.

Although he does not say so, Slater is actually requesting dual credit for this three-year period of jail custody. If Slater is correct that he was awaiting transfer to prison to serve his revocation sentence for the three years he was in jail custody, then he would be entitled to credit for this custody time against the revocation sentence itself.

The State questions Slater's claim that Wis. Stat. § 973.10(2)(b) applies in this case. Granted, Wis. Stat. § 973.10(2)(b) resembles Wis. Stat. § 304.072(4), on which *Davis* relied in concluding that time in jail custody between supervision revocation and transfer to prison is creditable against a concurrent sentence. Like section 304.072(4), section 973.10(2)(b) provides that, upon revocation of

probation, the term of a revocation sentence begins on the date the probationer enters prison.

But, by its own terms, Wis. Stat. § 973.10(2)(b) only applies when DOC orders the revoked probationer to prison and sentence has already been imposed. Here, Slater was returned to the sentencing court, which (re-)imposed an imposed and stayed sentence. (R-App. 103.) Wisconsin Stat. § 973.10(2)(a), which addresses when the revoked probationer is returned to the court for sentencing, would thus appear to be a better fit in this case. It provides only that the court must impose sentence "without further stay," without specifying when that sentence begins. Wis. Stat. § 973.10(2)(a).

Moreover, if Slater's interpretation of Wis. Stat. § 973.10(2)(b) were accepted, an offender who received the same sentences as Stater but was transported to Dodge Correctional following revocation instead of remaining in the Marathon County jail until trial on the armed robbery charges would not receive the same jail credit, merely because that offender served that three-year portion of his revocation sentence in Dodge Correctional rather than the Marathon County Jail. To grant Slater such a windfall in these circumstances would be absurd and unjust.

But this Court need not decide whether Slater's view is correct. Because, even assuming that it is, and that he was not serving his revocation sentence during the three years at issue, an award of credit in these circumstances would constitute impermissible dual credit under *Rohl,* 160 Wis. 2d at 330, and *Jackson*, 233 Wis. 2d. 231, ¶ 19. Additionally, Slater should not be heard to complain of the alleged error that resulted in the court not awarding him credit because Slater induced this error.

1. The court sentencing Slater after revocation did not intend for the revocation sentence to be concurrent with the present case.

As noted, all the parties at Slater's August 1, 2005 sentencing, including the sentencing court, the State and Slater, treated Slater's service of the revocation sentence as separate and apart from his sentences for the armed robbery counts in this case, noting that the three years Slater spent in Marathon County jail awaiting that sentencing was in service of his "probation revocation case." (R. 254:6.) And there is no indication that the court intended its sentences in this case be concurrent to that wholly separate probation revocation sentence. Thus, Slater's confinement on his current sentence was not, and could not be, concurrent with his revocation sentence. *See Jackson*, 233 Wis. 2d 231, ¶ 19 (dual credit not available on separately served sentences). Because the court did not intend the current sentence to run concurrently with the revocation sentence, dual credit is not available toward the present sentence for the three years of jail confinement. *See Boettcher*, 144 Wis. 2d at 100 (dual credit is only available on concurrent sentences). Indeed, while *Davis* says that credit is available for time awaiting transfer to prison following imposition of a revocation sentence only when the sentence on the new crime is ordered to run concurrently with the revocation sentence, *Davis*, 377 Wis. 2d 678, ¶ 9, *see also Hintz*, 300 Wis. 2d 583, ¶ 12, Slater's brief does not even address whether his present confinement is concurrent with the revocation sentence.

In his reply brief, Slater may argue that, because the sentencing court did not expressly address whether the sentence was concurrent or consecutive, his present confinement is concurrent with the revocation sentence under the rule of lenity, which holds that ambiguities in judicial and legislative pronouncements are construed in the criminal

defendant's favor. *See State v. Kittilstad*, 231 Wis. 2d 245, 267, 603 N.W.2d 732 (1999).[6] But, as argued, the court plainly did not intend for the sentence to run concurrently with the revocation sentences, which it (and the parties) believed were already served. Slater thus cannot reasonably argue that the court intended the sentence to run concurrently under the circumstances.

Slater may also argue that the court did not address whether the two sentences should be served concurrently or consecutively because the court erred in determining that the revocation sentence was served separately. But, as shown below, such an argument—and Slater's claim in general—should be barred by the doctrine of invited error.

2. Slater's credit claim should be denied because he invited the sentencing court's alleged error resulting in the denial of credit for the additional three years of jail custody.

"Generally, when a party 'invites error' on a given issue, [this Court] will not review the issue . . . ." *In re Support of C.L.F.*, 2007 WI App 6, ¶ 15, 298 Wis. 2d 333, 727 N.W.2d 334 (citation omitted); *In Interest of Shawn B.N.*, 173 Wis. 2d 343, 372, 497 N.W.2d 141 (Ct. App. 1992) ("If error occurred, [the appellant's] counsel invited it. We will not review invited error.").

"The concept of invited error is closely related to the doctrine of judicial estoppel, which is based on the notion that '[i]t is contrary to fundamental principles of justice and

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[6] Slater may also make a similar argument under the principle that sentences are presumed to be concurrent. *See Application of McDonald*, 178 Wis. 167, 1030, 189 N.W. 1029 (1922). This Court has questioned the continued vitality of this rule, however. *State v. Brown*, 150 Wis. 2d 636, 639, 443 N.W.2d 19 (Ct. App. 1989).

orderly procedure to permit a party to assume a certain position in the course of litigation which may be advantageous, and then after the court maintains that position, argue on appeal that the action was error.'" *In re Support of C.L.F.*, 298 Wis. 2d 333, ¶ 15 (quoting *State v. Gove*, 148 Wis. 2d 936, 944, 437 N.W.2d 218 (1989)). This Court determines *de novo* whether to apply the doctrine of invited error in a given case. *State v. Gary M. B.*, 2004 WI 33, ¶ 11, 270 Wis.2d 62, 676 N.W.2d 475

Here, Slater's claim for additional credit rests on an attack on the sentencing court's treatment of his June 2002 to June 2005 jail confinement as service of his revocation sentence, which precluded credit for this three-year period under *Beets*. *See Beets*, 124 Wis. 2d at 377. (credit not available for custody time spent in service of another sentence). But the sentencing court did not take up and decide the issue of whether the revocation sentence already served *sua sponte*. Rather, it was the product of a stipulation between the parties regarding sentence credit.

The record shows that the State explained at sentencing that three years of Slater's jail confinement leading up to his sentencing were spent serving his revocation sentence. The State then asserted that Slater was entitled to 164 days of credit for jail custody not spent in service of the revocation sentence. When asked to respond to the State's position on sentence credit, defense counsel expressed agreement: "I have no objection to [the State's] calculation, your Honor." (R. 254:6.)

Thus, at the 2005 sentencing, Slater agreed with the State that he was not entitled to credit for three years in jail custody because it was spent in service of Slater's revocation sentence. Relying on the parties' agreement, the court summarily awarded Slater 164 days of credit toward his current sentence. (R. 254:29.)

Now, Slater argues that the sentencing court erred in treating the revocation sentence as being served when it did not award him credit for this time. Slater's current view is that the revocation sentence could not have been served because, under Wis. Stat. § 973.10(2)(b), a sentence upon revocation of probation does not begin until the date the offender arrives at the prison.

But Slater induced the 2005 court to commit the alleged error Slater now complains of. After the State explained that three years of Slater's pretrial jail custody was spent in service of the revocation sentence, and was therefore not creditable against the current sentence, defense counsel stipulated to the State's calculation of sentence credit. As a result, the court made an award of credit that was consistent with the parties' view that the revocation sentence was served in the county jail. Where Slater induced the court to commit the alleged error resulting in the denial of the credit, he should not now be heard to complain of that the error in seeking additional credit. *See In re Support of C.L.F.*, 298 Wis. 2d 333, ¶ 15. Slater's credit claim should therefore be rejected under the doctrine of invited error.

For these reasons, Slater is not entitled to the three years of additional sentence credit he seeks in this appeal.

CONCLUSION

This Court should affirm the order denying Slater's motion for 1096 days of additional sentence credit.

Dated this 22nd day of April 2021.

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 length of this brief is 4,077 words.

Dated this 22nd day of April 2021.

Electronically signed by:

s/ Robert G. Probst
ROBERT G. PROBST
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of the Interim Rule for Wisconsin's Appellate Electronic Filing Project, Order No. 19-02.

I further certify that:

A copy of this certificate has been served with this brief filed with the court and served on all parties either by electronic filing or by paper copy.

Dated this 22nd day of April 2021.

Electronically signed by:

s/ Robert G. Probst
ROBERT G. PROBST
Assistant Attorney General

Supplemental Appendix
State of Wisconsin v. Joseph L. Slater
Case No. 2020AP1936-CR

SUPPLEMENTAL APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is a supplemental appendix.

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, 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.

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Assistant Attorney General

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