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**COURT OF APPEALS**

STATE OF WISCONSIN  
C O U R T O F A P P E A L S  
DISTRICT II

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Case No. 2023AP970-CR

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STATE OF WISCONSIN,  
  
Plaintiff-Appellant,  
  
v.  
  
SCOTT R. DACHELET,  
  
Defendant-Respondent.

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APPEAL FROM AN AMENDED JUDGMENT OF  
CONVICTION GRANTING SENTENCE CREDIT  
ENTERED IN CALUMET COUNTY CIRCUIT COURT,  
THE HONORABLE JEFFREY S. FROEHLICH,  
PRESIDING

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**REPLY BRIEF OF PLAINTIFF-APPELLANT**

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## INTRODUCTION

The parties agree that this is a *Beets*<sup>1</sup> case. The availability of credit for Dachelet's jail custody from his November 4, 2022 probation revocation to his November 29, 2022 sentencing in the present case turns on whether he was serving an unrelated sentence at the time, which would have severed the connection between his jail custody and the present case. (Dachelet's Br. 12.) The dispositive question is did Dachelet's other sentence—the imposed and stayed jail sentence in another case—begin on November 4, when Dachelet's probation was revoked and Dachelet remained in jail? Or did it begin sometime later?

Dachelet asserts that the other jail sentence did not begin until after his prison sentence was imposed in the present case on November 29. He offers multiple rationales for this position, discussed herein. (Dachelet's Br. 12–23.) None are persuasive.

The only reasonable view is that, when a defendant's probation is revoked, an imposed and stayed sentence to jail begins when the defendant enters the jail—or if the defendant is already sitting in jail, as here, on the day of revocation. Because Dachelet was serving his imposed and stayed jail sentence in the other case from November 4 to November 29, 2022, the circuit court erred in granting him 25 days of credit for this time in the present case.

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<sup>1</sup> *State v. Beets*, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985).

## ARGUMENT

**Dachelet is not entitled to sentence credit for 25 days in custody leading up to his sentencing after revocation because he was serving another sentence at the time.**

A convicted offender is entitled to sentence credit for all days spent in custody “in connection with the course of conduct for which sentence was imposed.” Wis. Stat. § 973.155(1)(a). When a defendant is awaiting trial in one case and serving a sentence in another, unrelated case at the same time, they are not entitled to credit for this custody time on the pending case. *State v. Beets*, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985).<sup>2</sup> Service of the sentence in the unrelated case “severs” the connection between custody and the pending case. *Id.*

In early 2022, Dachelet was placed on probation in two cases: the present case (possession of methamphetamine and felony bail jumping) for which the sentencing court *withheld* sentence, and another (felony bail jumping) for which the

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<sup>2</sup> In its summary of the *Beets* decision, the State asserted that Beets was on probation with an imposed and stayed sentence at the time his probation was revoked. (State’s Br. 10.) As Dachelet points out (Dachelet’s Br. 11 n.1), this was incorrect; sentence had yet to be imposed when Beets was on probation, and the circuit court sentenced Beets following his revocation. *See Beets*, 124 Wis. 2d at 383. Counsel sincerely regrets the error.

This mistake isn’t relevant to the State’s argument, however. The State doesn’t rely on a mistaken factual similarity between *Beets* and the present case in arguing that credit is unavailable for Dachelet’s November 4–29, 2022 custody. It relies on *Beets* for a legal principle—service of an unrelated sentence severs the connection between custody and a pending case—and argues that the connection between Dachelet’s jail custody and the present case was severed here when Dachelet began serving his imposed and stayed jail sentence on November 4.

court *imposed and stayed* a nine-month jail sentence. (R. 149:21–22.)

In October 2022, Dachelet violated his probation and was held in jail on a probation hold. (R. 120:4, A-App. 17.) At this time, Dachelet’s jail custody was plainly “in connection with” both cases. But on November 4, 2022, the Department of Corrections (DOC) revoked Dachelet’s probation, removing the stay on the imposed sentence in the other case. (R. 120:6, A-App. 19; 156:4, A-App. 70.) DOC referred Dachelet to the circuit court for sentencing in the present case. (R. 120:1, A-App. 14.)

The dispositive issue for determining the availability of credit for Dachelet’s November 4–29, 2022 jail custody is when did the stayed and imposed jail sentence begin and thus “sever” the connection between Dachelet’s custody and the present case. The State’s position is that it began on November 4.

The Legislature has addressed when an imposed and stayed sentence *to prison* begins if the defendant’s probation is revoked: “on the date the probationer enters the prison.” Wis. Stat. § 973.10(2)(b); *State v. Slater*, 2021 WI App 88, ¶ 14, 400 Wis. 2d 93, 968 N.W.2d 740. It has not addressed when an imposed and stayed *jail* sentence begins following revocation of probation, and no citable Wisconsin case appears to have done so.

But, as argued more fully in the opening brief (State’s Br. 13–16), the only reasonable view is that the jail sentence begins on the day the probationer enters the jail—or if the probationer is already in the jail, as Dachelet was, on the day of revocation. In general, a sentence following revocation of probation, parole, or extended supervision begins or resumes *when the defendant enters the facility to which he or she was sentenced*. See *Slater*, 400 Wis. 2d 93, ¶¶ 14–15; *State v. Davis*, 2017 WI App 55, ¶ 10, 377 Wis. 2d 678, 901 N.W.2d 488; *State*

*v. Presley*, 2006 WI App 82, ¶ 14, 292 Wis. 2d 734, 715 N.W.2d 713. Pursuant to Wis. Stat. § 973.10(2)(b), following revocation, an imposed and stayed sentence to prison begins “on the date the probationer enters the prison.” *See Slater*, 400 Wis. 2d 93, ¶ 14. Likewise, Wis. Stat. § 304.072(4) provides that the prison sentence of a person revoked from parole or extended supervision “resumes running on the day he or she is received at a correctional institution.” *Davis*, 377 Wis. 2d 678, ¶ 10; *Presley*, 292 Wis. 2d 734, ¶ 14.

No other rule makes sense. The probationer must be in custody for their sentence to begin, so a rule that the sentence starts immediately without regard to the probationer’s entry into or presence in the jail is illogical. And a rule that delays the start of the sentence for some outside reason unrelated to the sentence makes little sense either. Yet the latter rule is exactly Dachelet’s position in this appeal.

Dachelet states that “[h]ad [he] not received a prison sentence in this case” on November 29, “then he would agree with the state’s position that his imposed-and-stayed jail sentence in [the other case] would have begun on November 4, 2022, when the DOC revoked his probation.” (Dachelet’s Br. 21.) Dachelet thus appears to agree with the State’s analysis of the legal issue presented in this case: That, following revocation, an imposed and stayed jail sentence begins when the probationer enters or remains in the jail. But, in Dachelet’s apparent view, the start date of the imposed and stayed jail sentence *in his case* was delayed by the fact that he would be sentenced later that month in the present case.

Dachelet doesn’t explain why the pending sentencing proceeding would delay the start date of the imposed and stayed jail sentence. He only says that (1) when a defendant is sentenced to prison, their existing jail sentences are served in prison, pursuant to Wis. Stat. § 973.03(2); (2) Wis. Stat. § 973.10(2)(b) provides that the sentence of a revoked probationer “shall begin on the date the probationer enters

the prison”; and (3) “revocation is not a sentencing” and “revocation alone does not sever an existing connection for sentence credit purposes.” (Dachelet’s Br. 18–21.) These are all correct statements of law. Yet they also do not address the issue in this case.

Yes, Dachelet will serve most of his jail sentence in prison pursuant to Wis. Stat. § 973.03(2). But neither section 973.03(2) nor any other authority delayed the start date of Dachelet’s imposed and stayed jail sentence to the start date of his prison sentence in the present case. That the remainder of the imposed and stayed jail sentence later effectively became a prison sentence pursuant to section 973.03(2) does not mean that the jail sentence began when he entered the prison following his November 29 sentencing in the present case.

Finally, Dachelet’s various arguments about revocation and his two extended discussions of *Beets*, *Slater*, *Davis* and *Presley* (Dachelet’s Br. 12–16, 19–22) reflect a misunderstanding of the State’s position. The State never argued that the revocation of Dachelet’s probation itself severed the connection between Dachelet’s jail custody and the present case, then pending. As argued above and in the opening brief, *Beets* and its progeny hold that *service of another, unrelated sentence* severs the connection between custody and a pending case. *See Beets*, 124 Wis. 2d at 379; *Slater*, 400 Wis. 2d 93, ¶ 13; *Davis*, 377 Wis. 2d 678, ¶¶ 8–10; *Presley*, 292 Wis. 2d 734, ¶ 8. So, Dachelet’s service of his imposed and stayed jail sentence in the other case—which started on November 4, 2022, as argued above and in the opening brief—is what severed the factual connection between Dachelet’s jail custody and the present case, not the revocation of probation itself.

Dachelet’s position treats his prison sentence in the present case as a forgone conclusion. But Dachelet’s November 29 sentencing was 25 days away when his

probation was revoked. What if the court had instead imposed a sentence to jail, or time served? When would Dachelet's jail sentence in the other case have started then—November 29, November 4 (backdated), or some other date? The Court should decline Dachelet's invitation to peg the start date of his jail sentence to the start date of a prison sentence not imposed until 25 days after the stay was removed from his previously imposed jail sentence.

In sum, following revocation of probation, an imposed and stayed jail sentence begins on the day the probationer enters the jail, or, if the probationer is already in jail at the time, on the day of revocation. Dachelet was already in prison on November 4, 2022, when his probation was revoked, and so his jail sentence began on that day, severing the connection between his custody and the present case. The circuit court therefore erred in granting Dachelet 25 days of credit for his November 4–29, 2022 jail custody.



## CONCLUSION

The portion of the amended judgment of conviction awarding 141 days of credit should be vacated and the case remanded with instructions to enter a new amended judgment of conviction awarding 116 days of credit.

Dated this 16th day of November 2023.

Respectfully submitted,

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### FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,745 words.

Dated this 16th day of November 2023.

Electronically signed by:

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### CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 16th day of November 2023.

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