

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

STATE OF WISCONSIN,

Appeal No. #2017AP2165-CR

Cir. Ct. No. 16CF5479

Plaintiff,

-VS-

TERRY T. ANDERSON,

Defendant,

RECEIVED

APPEAL FROM AN ORDER OF THE CIRCUIT  
COURT DENYING THE DEFENDANT MOTION  
TO REINSTATE HIS JAIL TIME CREDIT  
PURSUANT TO WIS. STATS. §973.155

MAR 26 2018

CLERK OF COURT OF APPEALS  
OF WISCONSIN

MR. TERRY T. ANDERSON #464082  
REDGRANITE CORRECTIONAL INST.  
P.O. BOX 925  
REDGRANITE, WI 54970-0925

STATE OF WISCONSIN

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Now Come's the defendant Terry T. Anderson, in the above action pursuant to Wis. Stats. §809.21 §809.30, §973.155, before this Honorable Court to have his jail time credit reinstated, State v. Presley, 2006 WI App. 82, P.13, 292 Wis. 2d 734, 715 N.W.2d 713, (An offender who has had his or her extended supervision revoked is entitled to sentence credit on any new charges until the trial court resentences him or her from any available remaining term of extended supervision) See also State v. Davis, 2017 WI App. 55, 377 Wis.2d 678, N.W. 2d 488.

The defendant is entitled to all jail credit for revocation and new charges pursuant to §973.155 (1)(1m)(3)(5)(6) and due to the misapplication of State v. Boettcher, 144 Wis.2d 86, 423 N.W.2d 533 (1988).

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WIS. ADM. CODE DOC.

§302.22

§302.113 (9)(am)

WIS. STATS.

§304.072

§809.21 (2)

§809.30

§973.15, & §973.155(13)(6)

WISCONSIN CONST. ART. I SEC. 7 & 8.

## JURISDICTION

The court has jurisdiction over this matter according to §809.21, §809.30, §973.15 and §973.155 (1)(3)(5) and (6), to grant appropriate review and grant relief.

Notwithstanding, this court can review and grant relief although appellant would still be serving a sentence of confinement, State ex rel. Goodchild v. Burk, 27 Wis.2d 244, 261, 133 N.W.2d 753.

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Mr. Terry T. Anderson, does not request oral argument or publication in this matter.

The arguments presented in this brief are based upon well-established case law and therefore a decision by this court is supported by clearly establish law.

## ISSUES PRESENTED FOR REVIEW

- (1) The defendant entitled to jail time credit.
- (2) The defendant was not credited dual credit toward any sentencing.
- (3) Misapplication of the law deprives the defendant of his jail time credit.
- (4) Not harmless error.

## STATEMENT OF CASE

On November 28, 2016 defendant-appellant Terry T. Anderson, was arrested and charged with Battery pursuant to Wis. Stats. §940.19 (1) and Disorderly Conduct pursuant to Wis. Stats. §947.01 (1), at the time of his arrest Mr. Anderson had a commitment under Wis. Stats. §973.01.

On March 15, 2017, the defendant enter a plea on both counts before the Honorable Michael J. Hanrahan and was sentence to a consecutive sentence on both counts which was 2 years of confinement and 2 years of extended supervision, (1 year on count (1), one year of imprisonment and one year of extended supervision, and on count (2), 1 year imprisonment and one year of extended supervision, during the sentencing phase the defendant was credited 106 days under Wis. Stats §973.155, See exhibit (1).

After the defendant was sentence on case number #16CF5479, a Revocation Order and Warrant was issued on previous case number 14CF4230 and on March 16, 2017 he was revoked See exhibit (2).

The defendant was originally credited all jail time credit pursuant to Wis. Stats. §302.113 (9)(am), §304.072 (4) and §973.155 (1)(3).

## STATEMENT OF FACTS

The defendant was also credited for the time he spent in jail awaiting revocation and during his revocation hearing<sup>16</sup> the defendant was granted his jail time credit pursuant to Wis.

Stats. §302.113 (9)(am) §304.072 (4). See Exhibit #(3).

On June 28, 2017, the Department of Corrections Sentencing Associate Staff Rachel Ellenz, sent a letter to the Division of Hearings and Appeals to Diane Norman, pursuant to Wis. Adm. Code DOC §302.22 to request a review to see if the credit granted on the ROW is appropriate for both cases, which was 106 days. and ask that 106 days be removed from sentence credit from case 14CF4230 because it appears to be duplicate credit to case 16CF5479, and asking that the same sentencing date reflect the same sentencing as the 16CF5479 case See Exhibit # (4).

On September 6, 2017, the defendant received a Sentence Computation subtracting 106 days jail credit from case 16CF5479, and not from his recovaction, see Amended JOC dated August 31, 2017, reducing jail time credit from 106 days to zero days, See Exhibit #4 (b). and 5.

On September 13, 2017, the defendant petition the court to correct this error pursuant Wis. Stats. §973.155, to correct the removal of his Jail time credit for case number 16CF5479, the court denied the defendant motion as well as the defendant reconsideration motion on October 10, 2017. see Exhibit # (6), this brief follows, in which defendant-appellant reasserts he is entitled to all his jail credit pursuant to §973.155 (1)(3)(5) and (6).

This is where the confusion of the missapplication of applying or granting jail credit pursuant to either Wis. Stats. §304.072 (4) or Wis. Stats. §973.155 (1)(3)(5) and (6).

## ARGUMENT

1. THE DEFENDANT IS ENTITLED TO JAIL TIME CREDIT PURSUANT WIS. STATS. §973.155 (1)(3) (5) AND (6).

On November 28, 2016, the defendant was arrested and charged with two counts, during this time the defendant remain incarcerated in the county jail until he was sentence on March 15, 2017.

Under Wis. Stats. §973.155 (1)(a), states the following.

A convicted offender Shall be given credit toward the service of his or her sentence for all the days spent in custody in connection with the course of conduct for which sentence was imposed. As used in the subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:

1. While the offender awaiting trial;
2. While the offender is being tried; and
3. While the offender is awaiting imposition of sentence after trial.

In the above case the defendant was granted 106 days credited under Sub. Sec. (3) and (5) accordingly to Sub. Sec. (2) toward case number 16CF5479, which was later titled by the court as dual credit, because state official errored when they attempted



to challenge the defendant jail time credit, by titling it as being dual credit.

State official sent a letter to the Division of Hearings and Appeals Administrator Diane Norman claiming that they believe Mr. Anderson was sentenced on case 16CF5479 prior to the revocation of case 14CF4230 and was awarded credit from 11-30-2016 to 3-15-2017, believing the Mr. Anderson was granted dual credit which is incorrect, because the defendant was granted the appropriate jail time credit, because the defendant was arrested on November 28, 2016 and was sentence March 15, 2017, which is 106 days which we was credited for. before he was revoked on his extended supervision.

2. THE DEFENDANT WAS NOT CREDITED  
DUAL CREDIT TOWARD ANY SENTENCING.

The defendant, Terry Anderson was awaiting revocation on a DOC hold for violations to his conditions of supervision, therefore under Wis. Stats. §302.113 (9)(am) and §304.072 (4) he is entitled to all jail credit awaiting revocation from 11-28-2017 until his receipt to Dodge Correctional Institution, See State v. Presley, 2006 WI App. 82, P.13, 292 Wis. 734, 715 N.W.2d 713, and State v. Davis, 2017 WI App. 55, 377 Wis.2d 678, 901 N.W.2d 488, which is not in dispute as this credit was given.

As previously stated the defendant was awaiting sentencing for the Battery and Disorderly Conduct-Repeater Charges and pursuant to Wis. Stats. §973.15 and §973.155 (3) and (5), he is entitled to all jail credit in connection with those crimes which

was deprived of that jail time credit when the Department of Corrections Sentencing Associate Staff Rachel Ellenz sent a letter to Division of Hearing and Appeals Administrator Diane Norman, raising the issue that the defendant was given dual credit and the court removed 106 days from case number 16CF5479 without notice or a fair hearing to remove such credit.

The issue regarding the jail time credit was originally challenging the defendant revocation and not his new sentence jail time credit, but somewhere before the court the confusion of case number 16CF5479 and his revocation case calculation was challenged and the wrong application of the law was applied.

Wis. Stats. Chapter §302, §304, and §973 were clearly established law prior to and after his sentencing, there was no duplicate credit, Mr. Anderson was credited "Originally" consistent with clearly established laws, and he was never retried on any charges and all jail credit that was originally applied was done appropriately and state officials are assumed to know the law and should be applied accordingly see Cannon v. Univ. of Chicago, 441 U.S. 677, 693-97 (1979), STATE v. COMSTOCK, 168 Wis.2d 915, 485 N.W.2d 354 (1992).

3. MISAPPLICATION OF THE LAW  
DEPRIVES THE DEFENDANT OF  
JAIL TIME CREDIT

The defendant was denied his jail time credit when the misapplication of the law was applied under Boettcher, which bars a claim for dual credit when the defendant has already

Note: Case Cited: State v. Jenson, 2004 WI App 89, 272 Wis.2d 707, 729, N.W.2d 230.

received the same credit against a prior sentence that the defendant has already served, See State v. Jackson, 2000 WI App. 41, 233 Wis.2d 231, 607 N.W.2d 338. which is inapplicable to the circumstances presented in this case, State v. Howell, 681 N.W.2d. 871.

First Boettcher is distinguishable from the current circumstances, because Boettcher was revoked prior to his sentence of possessing a firearm, in that case the court held, "when two consecutive sentences are imposed, when jail credit for custody that is connected to both sentences reduces the term of confinement of the first sentence to be served." State v. Boettcher, 144 Wis.2d 86, 100, 432 N.W.2d 533 (1988), As in Anderson case he was sentence on case number 16CF5479 prior to revocation therefore Boettcher standard does not apply see Wis. Stats. §973.155 (1)(3)(5) and (6), State v. ComStock, 485 N.W.2d 354 (1992).

Second, No where in Wis. Stats. §§§§ 302.113, 304.072, 973.15, or 973.155 does the law prohibit dual credit if it is applied in any case of revocation, concurrent or in consecutive sentences, the dual credit argument has no factual legislative purpose or application to the defendant claim of jail credit., (to allow the imposition of an unauthorized criminal penalty on the basis of waiver, ignores the dictate of penalties imposed in excess of that prescribed by law), State v. Hanson, 2001 WI 70, 244 Wis.2d 405, 628 N.W.2d 759.

Third, the court had already credited the defendant the jail time prior to his revocation and to take that served jail time credit now would increase the defendant original sentence, would

increase the time he would have to serve in connection with the crimes, whether this is done within the prison system or on supervision the defendant time would increase, State v. Lamar, 2011 WI 50, 334 Wis.2d 536, 799 N.W.2d 758.

Misapplication of the law can increase a defendant sentence whether court applied or construed "dual credit", the defendant, Mr. Anderson was not "resentenced" in accordance with State v. Henning, 2004 WI 89, 273 Wis.2d 352, 363, 681 N.W.2d 871, nor North Carolina v. Pearce, 395 U.S. 711, 734-25.

This is due to the defendant not being retried, or resentenced after the time of his original sentence, and due to the fact that double jeopardy may attach on both sentencing, the defendant can not be deprived of his jail time credit on time he served while awaiting sentencing of a crime.

Notwithstanding, even if "dual credit" was awarded upon a misconstruction of Wis. Stats. §973.155 resentencing or deprivation of jail credit is barred. State v. Henning, 2004 WI 89, 273 Wis.2d 352, 363, 681 N.W.2d 871, See also Arizona v. Rumsey, 462 U.S. 203, 211 (1984)(noting a judicial acquittal premised upon a misconstruction of a criminal statute is an acquittal on the merits that bars retrial).

#### 4. NOT HARMLESS ERROR

There is no harmless error in substantially increasing the the time of the defendant we will serve in connection with the crimes he had already committed State v. Harris, 2008 WI App.

189, 315 Wis.2d 537. Harmless error is not applicable under the circumstances, Brecht v. Aberhamson, 507 U.S. 619 (1993), the deprivation of sentence credit after it was given directly affects appellant's liberty.

The community reliance that the government will abide by the rules that it establishes as in Wis. Stats. §973.155 and the governments constitutionally mandated obligation to due process, Morrisey v. Brewer, 408 U.S. 471 (1972).

The defendant asserts that according to the mentioned Wis. Stats. the DOC requested and applied the wrong standard to the defendant jail time credit and requested the court to do the same under the Boettcher standard when even in Boettcher case he was given his jail time credit on his revocation and then he was sentence for the crime that he had committed, but even if that was the case and it had applied to Mr. Anderson case he was still entitled to his jail time credit under Wis. Stats. §973.15, §973.155, (1)(3)(5) and (6).

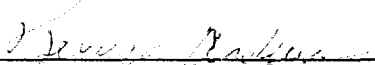
#### CONCLUSION

The defendant asserts that there was no legal basis to deprive him of his jail time credit, he was correctly given this pursuant to Wis. Stats. §973.155, and DOC fail to follow the law because the defendant was never given notice of the state letter August 29, 2017. (letter from DOC review of sentence credit), nor was he aware of any hearing on August 30, 2017 by Judge

Hanrahan, the only document received was from the court of an amended Judgment of Conviction removing the 106 days jail time credit from case number 16CF5479 which was dated August 31, 2017 and received October 27, 2017., See exhibit 7 and 8.

Therefore all "original sentence credit should be reinstated, pursuant to Wis. Stats. §805.03 and §973.155 (6)

Respectfully submitted by

  
\_\_\_\_\_  
Mr. Terry T. Anderson #464082  
Pro se.

Dated this 21 day of March, 2018.


FORM AND LENGTH CERTIFICATION

I Terry T. Anderson certify that this brief conforms to the rules contained in §809.19 (8)(b) and (c) for a brief produced with a monospaced font must be 10 characters per inch; double-spaced; a 1.5 inch margin on the left side and 1 inch margins on all other sides.

The length of this brief is 10 pages.

Dated this 21 day of March, 2018.

Respectfully submitted by:

  
\_\_\_\_\_  
Mr. Terry T. Anderson #464082  
Pro se.

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APPELLANT'S BRIEF APPENDIX CERTIFICATION

I, Terry T. Anderson 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 s. §809.19 (2)(a) and that contains, at a minimum: (1) a table of contents, (2) the findings or opinion of the circuit court; and (3) 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 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 first names and last initials instead of full names or person, specially including juveniles and parents of juveniles, with a notation the the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 21 day of March, 2018.

Terry T. Anderson  
Signature:

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