

STATE OF WISCONSIN
C O U R T O F A P P E A L S
D I S T R I C T I
APPEAL CASE NO. 2017AP002165-CR

RECEIVED
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CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN,

Plaintiff-Respondent,

-VS-

TERRY TERRELL ANDERSON,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING HIS MOTION FOR
SENTENCE CREDIT ENTERED IN THE MILWAUKEE COUNTY
CIRCUIT COURT, HONORABLE T. CHRISTOPHER DEE
PRESIDING

DEFENDANT-APPELLANT REPLY BRIEF

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ISSUE PRESENTED

Did the circuit court err in denying the defendant 106 days of sentence credit for the time spent awaiting trial.

The trial court action is prohibited by Federal and State Constitutions.

Wis. Stat. §973.155 (1)(a)(3) creat substantive predicates in retaining stencing credits while in custody and is not limited to enumeration of (1)(a) 1, 2, and 3 by statutes, it extends to sentence credit in connection with prior sentences after his extended supervision is revoked, by statute prohibiting extension of his original sentence.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The defendant requests neither oral argument nor publication.

The briefs in this matter is fully supported by case law and Wisconsin Statutes §973.155, §973.01 (2).

STATEMENT OF THE CASE

On December 8, 2016 the defendant was charged with battery disorderly conduct, witness intimidation, and on March 9, 2017, the defendant entered a guilty plea in case number 16CF5479: the witness intimidation charges were dismissed,

and the defendant was sentence to two years imprisonment as to both misdemeanor counts, bifurcated as one year initial confinement and one year extended supervision, consecutive to each other and to his sentence in any other previous case.

On April 4, 2017, the defendant extended supervision was revoked and the defendant was granted 106 days of credit 106 days toward his revoked sentence for the time that he was awaiting the revocation period.

On August 23, 2017, The Department of Corrections Sentencing Associate wrote a letter to the court claiming that the court should review the 106 days that was granted to the defendant in case No. 16CF5479 as dual credit. and on August 30, 2017 the Hon. Michael Hanrahan, Milwaukee County Circuit Court issued an order amending the original judgement of conviction and reducing the sentence credit from 106 days to zero.

STANDARD OF REVIEW

This court can review a circuit's decision on a defendant's request for sentence credit de novo. State v. Presley, 2006 WI App. 82, 292 Wis.2d 734, 715 N.W.2d 713.

ARGUMENT

The Defendant Is Entitled To
All Requested Jail Time Credit

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, State v. Davis, 2017 WI App. 55, 377 Wis.2d 678 N.W.2d 488.

A. LEGAL STANDARDS

"A convicted defendant 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 the sentence was imposed." Wis. Stat. §973.155 (1)(a). Thus, to obtain sentence credit, the defendant must have been (a) in custody and (b) the custody must have been connected to the conduct that led to the sentence.

In the state brief, in which the state cited State v. Boettcher, 144 Wis.2d 86, 87, 423 N.W.2d 533 (1988), this case do not apply to the defendant case, because in the case the defendant was revoked and sentence before he was sentence before the ruling on the new charges whereas in the defendant case he was sentence and was given time credit for the time spent awaiting sentencing, under Wis. Stat. §973.155.

This was not a dual credit because the defendant was not given was sentence on two different charges, what the court ordered was during sentence was that the defendant will be sentence to 2 years confinement, one year imprisonment and one year of extended supervision which is to run consecutive to any other sentence that he is serving, therefore the defendant was not convicted to

consecutive sentence as the state may claim and therefore the state claim is moot and without any merits to its claims.

B. The Circuit Court was in error when it Denied the Defendant Time Credit Under Wis. Stat. §973.155.

A court in determining a sentence, may consider the amount of sentence credit which the defendant is entitled so as long as the court does not do so with the purpose of enlarging the sentence to deprive the defendant of his or her right to receive sentence credit State v. Armstrong, 2014 WI App. 59, 354 Wis.2d 111, 847 N.W.2d 860, 13-1995, State v. Sevelin, 554 N.W.2d 521 (Ct. App. 1996).

In the defendant case he was charged with a new crime while on extended supervision and before the revoked hearing took place he was sentenced and was granted 106 days jail time credit for the time served.

Under State v. Presley, 2006 WI App. 82, 292 Wis.2d 734, 715 N.W.2d 713, 05-0359.

In the Boettcher case it, only bars a claim for dual credit when the defendant has already received the same credit against a prior sentence that the defendant has already Served. State v. Jackson, 2001 WI App. 41, 233 Wis.2d 231, 607 N.W.2d 338, 99-1161.

A defendant who has had extended supervision revoked is entitled to sentence credit on any new charges until the trial court resentsences him or her for the available remaining term of extended supervision.

A reconfinement hearing is a sentencing, charge from the date of his arrest until the day of sentencing on both charges because

due to the defendant extended supervision was revoked, his resentencing had not yet occurred under Wis. Stat. §304.072 (4) and as the state claimed in their brief the defendant was given credit of 106 days according to Wis. Stat. §973.155 (1), a defendant 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. while he or she is awaiting trial, while he is being tried.

In the defendant case he is entitled to all jail time credit and in the state brief on page 6 stated the the defendant received a sentence in a previous case number 2014CF4230 and then was sentence on the case number 16CF5479 which is not dual sentence, because one sentence is the credit due to the defendant for the time spent in jail awaiting sentencing for the pending case, under §973.155 (1), and as for the credit that the defendant received was only given to the defendant because he was on parole at the time of the charges was pending and when the defendant entered a guilty plea, he was entitled to that jail time credit.

At the time of the sentence the defendant was not facing any other charges that would support the term of dual credit therefore the defendant only received the entitled credit that was due accordingly to the Wis. Stats §973.155. and under Wis. Stat. §973.155 (2) In case of revocation the division of hearing and appeal in the department of administration, shall make such finding of how much jail time credit a defendant shall receive as part of the revocation under Wis. Stat. 973.155 (5).

Therefore, the defendant is entitled to all of the jail time credit under the statutes, for new charges and for any revocation time in which he have served while awaiting to be revoked and in State v. Turja, 171 Wis.2d 773, 495 N.W.2d 104, 1992 Wisc. App. LEXIS 1179 (Wis. Ct. App. 1992). and Wis. Stat. §973.155, the defendant is entitled to dual credit if that was the issues in which the state trying to present to this court, it is without merits because the defendant is entitled to dual credit against the time imposed for his parole revocation and the sentence imposed following his conviction on a battery, disorderly conduct charge, which caused the revocation of his extended supervision, for the time he was placed in custody for revocation hold following his arrest on the battery charge and soforth, and for the time awaiting sentencing.

C O N C L U S I O N

For the reason stated within this reply brief the defendant ask that this court render an order to reinstate the 106 days in which the trial court took due to the misapplication of the law and proceedings, and in case No. 16CF5479.

The defendant is entitled to the 106 days and the defendant respectfully request that this court grant his request.

Dated this June day of 11, 2018.

Respectfully submitted,



Terry F. Anderson
Pro se.

C E R T I F I C A T I O N


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 monospaced.

The length of this brief is 7 pages with 10 characters per inch; double-spaced; a 1.5 margin on the left side and 1 inch margins on all other sides.

A copy of this certification has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this June day of 11, 2018.

Respectfully submitted


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