

STATE OF WISCONSIN

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DISTRICT I

STATE OF WISCONSIN,

Plaintiff,

Case NOS.14CM2943

V.

15CM2635

WAR NAKULA-REGINALD MARION

Appeal Nos.2019AP2206-CR

2019AP2207-CR

Defendant-APPELLANT,

ON APPEAL FROM THE CIRCUIT COURT FOR MILWAUKEE COUNTY
CIRCUIT COURT JUDGE FREDERICK C. ROSA PRESIDING

BRIEF OF THE DEFENDANT-APPELLANT, WAR MARION

TO: WISCONSIN COURT OF APPEALS

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STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT I

STATE OF WISCONSIN,**Plaintiff,****V.****WAR MARION,****DEFENDANT.****Case Nos. 2019AP2206****2019AP2207- CR**

**ON APPEAL FROM THE CIRCUIT COURT FOR MILWAUKEE COUNTY
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TO: WISCONSIN COURT OF APPEALS**110 EAST MAIN STREET, SUITE 215****POST OFFICE BOX 1688****MADISON, WISCONSIN 53701-1688****FROM: MR. WAR MARION****RACINE CORRECTIONAL INSTITUTION****P.O. BOX 900****STUTEVANT, WI. 53177-0900**

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3. EX PARTE UNITED STATES (1916) 242 U.S. 27, 37 SUP. CT. 72, 61 L. Ed. 129.
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5. J.V. V. BARRON, 112 WIS.2d 256(1983)
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11. STATE V. PRESLEY, 2006 WI.APP. 82
12. STATE EX REL. REDMOND V. FOSTER, 2016 WISC.APP.LEXIS 839

CITED STATUTES

WIS. STAT. § 809.32(F)

WIS. STAT. § 973.04

WIS. STAT. § 973.155(!)(A)(B) AND (5)

WIS STAT. § 973.14

WIS. STAT. RULE 809.19.(1)(b)

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- 1) The circuit Court Judge prejudicially abused his discretion in denying Marion's motion for time derved.
- 2) Circuit Court Judge prejudicially abused his discretion in relying on Marion's petition of Writ of Habeas corpus case no.18CV002855 that is a civil case, rather than making an independant decision on Marion's criminal case nos. 14CM002943 and 15CM002635, which had nothing to do with Marion's civil case, whereas his decision also shows bias.
- 3) Marion's credit was not addressed in the civil case the judge relied on, so Marion (should have been entitled to addressed his credit and motion for time served before another court.

WIS. STAT.RULE 809.19(1)(C)

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Marion request oral argument, but not publication pursuant to Wis. Stat. Rule 809.22(1).

STATEMENT OF THE CASE

WIS. STAT.RULE 809.19(1)(D)

On 7/29/2014, criminal charges were filed against Marion for two counts of misdemeanor battery, criminal trespassing to dwelling, and disorderly conduct, all misdemeanors. On 7/30/2015, Marion was later charged with one consecutive count of Intimidate witness as a misdemeanor. count two of one of the battery charges was dismissed prior to jury trial on 9/28/2015.

On 10/7/2015, Marion was found guilty by a jury verdict. On 10/30/2015, Marion was sentenced on all remaining misdemeanor charges to their full Maximum, excluding penalty enhancers.

All charges were consecutively ran consecutive to each other. Nine months was given credit but later taken away because the department of corrections wrote to the court claiming an erroneous claim of dual credit for credit given in Marions felony conviction in 2001, that this credit was already given and served. In reality, it was not really dual credit and Marion should have been entitled to his misdemeanor credit in the new case. On October 1, 2019, Marion filed a pro se motion for time served in the circuit court which was denied on October 9, 2019, by the circuit court judge frederick c. rosa.

Marion appealed from that decision, and filed a motion with his appeal on October 21, 2019, and filed another motion dated November 15, 2019, wherein all motions Marion has filed with this court of appeals should be considered.

WIS. STAT. RULE 809.19(1)(E)

ARGUMENT

Circuit Court Judge Frederick C. Rosa prejudicially and biasly abused his discretion in first denying Marion's motion without looking to the facts and/or merits, for which could have entitled Marion to relief.. Second, it was clear that this court judge should have had full jurisdiction over Marion's case because he was the successor to judge Rebecca Dallet's domestic violence calendar. Third, by this judge relying on Marion's petition for writ of habeas corpus case no. 18CF2855, and Marion's claims against the department of corrections in a civil matter was irrelevant to Marion's criminal appeal and/or motion. Further Marion did request the same or similar arguments, and as to a concurrent sentence and motion to modify the sentence due to multiple errors prior to trial, during trial, after trial, and at sentencing that violated Marion's 4th, 5th, 6th, and 14th United States Constitutional Amendment rights.

Marion also brought up these issues during his timely filed appeal, with appointed appellate counsel Heather L. Johnson whom originally told Marion that she had found 17 issues then after a number of her no-shows and re-scheduled visits after a year and half or so, her and Marion got into an argument about her ineffectiveness, appellate counsel then claimed to state

now that Marion has no issues. Attorney Johnson then filed a no-merit report. Marion then filed a response to her no-merit report. Attorney Johnson has not filed a supplemental response required by Wis. Stat. Rule 809.32(F), within 30 days causing attorney Johnson's supplemental no-merit report to be delinquent. After multiple years of delay, Marion filed two independent pro se motions for time served due to the delay which brought about this separate appeal, but of the same case(s).

Marion also request time served because Marion being sentenced before his final revocation hearing on 11/17/2015, Marion had already started serving his misdemeanor sentence in the Milwaukee County Jail and the house of corrections before he was transferred to Dodge Correctional Institution on 1/13/2016, thus starting his revocation administrative time, which would leave the court's consecutive portion of the sentence to become void, Ab initio, void from the start. Thus Marion's misdemeanor counts are consecutive, they would still have to run concurrent to Marion's administrative time. Ex parte United States (1916) 242 U.S.27,37 Sup. Ct.72,61 L.Ed. 129: " A sentence imposed upon revocation of probation cannot be made consecutive to a sentence previously imposed.", further this court has stated at*75: " because a trial judge could impose a consecutive sentence after a revocation of probation when he could not have done so at the time of the initial finding of guilt." Marion does not dispute that the court has the authority to run counts or charges consecutive depending on a case by case basis, but in Marion's case where his misdemeanor sentence had already started on 10/30/2015, it could not be restarted at the end of Marion's administrative revocation time. The department

would have to continue to run Marion's misdemeanor with the revocation time as concurrent. Since Marion's misdemeanor sentence was lessor than the administrative revocation time, his misdemeanor sentence would be complete before his court ordered Maximum Discharge date of 2/10/2018, and/or the departments illegal administrative discharge date of 12/24/2019. There for Marion's misdemeanor should be time served.

Even if marion were to do his misdemeanor sentence consecutively, Marion still could not be held to do his misdemeanor sentence without penalty enhancers in a state prison at the end of his total maximum discharge date and sentence because the department would lose all jurisdiction over Marion and that they do not have the authority or jurisdiction to bifurcate a sentence, that is the sole dicretion of the court at the outset of sentencing. State v. Lasanski. The department would then have to transfer Marion to the Hopuse of corrections pursuant to Wis.Stat. Rule 973.14. Since the court of appeals in Marions habeas corpus case did not address these issues on appeal in Marions civil case, it would leave Marion to petition or by motion, request to another court full jurisdiction and to make an independant decision of the matters raised in this appeal addressing the facts for requesting time served. By the circuit court relying on Marion's habeas corpus case was prejudicial and biasly decided. It is clear that the courts are quick to take or rely on states interest when they see that a petitioner, like Marion, has chose to challenge the state and/or department of corrections for violating his constitutional rights and when it is clear by the courts that violations occurred

in Marion's habeas corpus case in which this court clearly ignored, ALSTON V. SMITH, 840 F.3d 363 (7th Cir.2016), but Marion's arguments for time served, with credit should have nothing to do with Marion's criminal appeal issues, and Marion request fundamental fairness by an impartial court in which Marion should be legally entitled. EAGLE V. ISAAC, 456 U.S.107, 126(1982); J.V. V. BARRON, 112 WIS.2d 256(1983); STATE ex Rel. REDMOND V. FOSTER, 2016 WISC. APP.LEXIS 839; FAHEEM-EL v.KLINCLAR, 814 F.2d 461(7TH CIR.1987); STATE ex Rel.GREER V. WIEDENHOEFT, 353 WIS.307 (S.CT.OF WIS.2014).

MARION SHOULD BE GRANTED TIME SERVED ON ALL CASES,
WITH CREDIT.

Marion should be entitled to time served on his misdemeanor cases with credit because he has shown that:

- 1) The department could not run Marion's misdemeanor sentence consecutive "after" he had already started serving his sentence in the milwaukee county jail and house of corrections before his final revocation hearing on 11/17/2015, and/or sent to prison on 1/13/2016.
- 2) The circuit court erroneously relied on Marion's civil habeas corpus case, which was irrelevant to the decision to be made in marion's criminal case. The circuit court showed clearly that he was bias for which he made his decision on by stating:
" The defendant motion raises claims against the department of corrections which are properly before this court", citing to Marion's habeas corpus case 18CV2855. Even if Marion did mention the department in his motion(s), they would be relevant to Marion's motion for time served, with credit because

the department is using Marion's misdemeanor without penalty enhancers, as an excuse to hold Marion in prison, despite the fact that they have exceeded Marion's Maximum Discharge date of 2/10/2018, and the fact that they are using this reason and excuse to not fix Marion's constitutional liberty claim.

3) Marion has also shown that the department did not give Marion the full credit he is entitled to, and made a false claim of dual credit for credit that was already given and served back in 2001, and the fact that Marion was sentenced before he was revoked, so Marion should be entitled to the misdemeanor credit or the administrative credit, or the credit under wis. stat. rule 973.04, in which marion received a new Judgement of Conviction seven month before he was revoked and is entitled to all credit for his prior incarceration. The department refuses to take NO ACTION until the court gives them an order to adjust marion's time and credit. These are clear reasons why the department is relevant.

Marion is entitled to all credit he is due, state v. presley, 2006 WI.App.82; wis, stat. rule 973.155(1)(A) and ((B)), State v. Gilbert, 115 Wis.2d 371, 340 N.W.2d 511 (1983):

This section grants credit for each day in custody regardless of the basis for confinement as long as it is conected to the offense for which the sentence is imposed. Wis Stat. § 973.155(5), and 973.04.

Marion served 12 years and 25 days before his extended supervision and revocation, Since Marion has received a new judgment of conviction on the same case, 01CF000818, Marion is entitled to this credit. Though Marion has completed his court ordered Maximum Discharge date of 2/10/2018, and the illegal administrative Maximum discharge date of 12/24/2019, that was

imposed on Marion by a body without jurisdiction, the court should grant the remaining credit towards Marion's misdemeanor sentence then grant time served. State ex.rel.Eastman v. Burke, 28 Wis.2d 170, 136 N.W.2d 297 (Wis.1965): Defendant upon a redetermination of guilt, should receive allowance for whatever time of imprisonment he had served by reason of the acts constituting the offense with which he was charged. For these reason, Marion should be remanded back to the circuit court with directions, and impartiality and a fair determination of the issues addressed.

WIS.STAT.§ 809.19(1)(F)

CONCLUSION

Marion request a remand with directions, and impartiality and a fair determination of the issues addressed and consistant with this appellant's brief.

Respectfully submitted By:

Mr. War Marion

Signature: War Marion

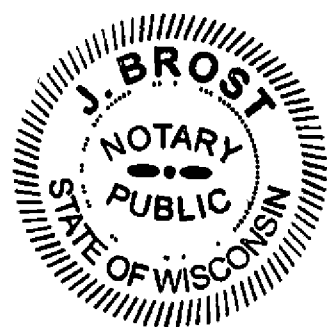
Date: 4/29/2020

NOTARY:

Subscribed and sworn to before me this 29 day of April 2020

J. Brost
Notary Public

My commission expires 09/03/2022



WIS.STAT. § 809.19(8)(B) AND (C)
FORM AND LENGTH CERTIFICATION

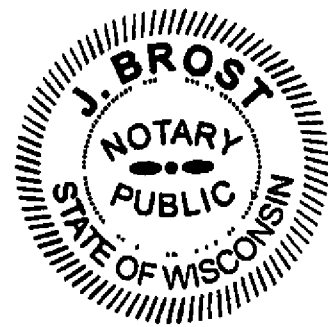
I hereby certify that this brief conforms to the rules contained in § 809.19(8)(B) and (C) for a brief produced with a monospaced serif font.

The length of this brief is 13 pages.

Signature: *Don Martin*

Date: 4/29/2020

NOTARY:



Subscribed and sworn to before me this
29 day of April 2020
J. Brost
Notary Public

My commission expires 09/03/2022

WIS.STAT. § 809.19(2)(A)

APPELLANT'S BRIEF APPENDIX CERTIFICATION

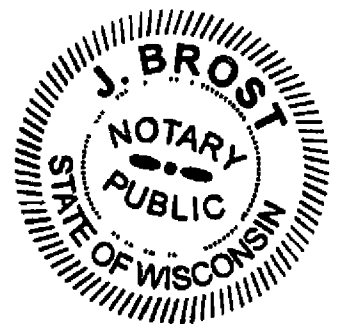
I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s.809.19(2)(a) and contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues to be 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 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 persons, specifically including juveniles and parents of juveniles, with notation that the portion of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

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CERTIFICATE OF MAILING

I certify that this brief or appendix was desposited in the wisconsin racine correctional institution mailbox and/or given to the sargent and/or staff on the kenosha west side of the unit to be mailed by first class of mail that is at least expeditious to the court of appeals and all parties concerning this case.

Signature: Wan Maxwell

Date: 4/29/2020

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J. Brost
Notary Public

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