

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 13, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1531-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

State of Wisconsin,

Plaintiff-Respondent,

v.

Romel Anton Taylor,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: VICTOR MANIAN, Judge. *Reversed and cause remanded.*

SCHUDSON, J.¹ Romel Anton Taylor appeals from a judgment of conviction and the trial court "Order Granting Motion for Sentence Credit in Part." He argues that the trial court erred in not granting the full credit he requested. This court agrees and, therefore, reverses.

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

The facts relevant to resolution of this appeal are undisputed. Taylor pled guilty to two crimes, including one count of misdemeanor theft as a repeater for stealing 74 "CD's" from the Milwaukee Public Library. He was sentenced to three years in prison concurrent with a sentence after revocation of his parole stemming from an earlier conviction.

The trial court awarded Taylor twenty days of credit against his sentence for the pretrial incarceration between September 15, 1995, the date of arrest for the theft, and October 4, 1995, the date of parole revocation. Taylor argues that he also is entitled to additional credit for the period from August 9, 1995, when he was in custody on the parole hold, to September 14, 1995.

Sentence credit is governed by § 973.155, STATS. In relevant part, it states:

(1)(a) 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 sentence was imposed.* As used in this 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 is awaiting trial;
2. While the offender is being tried; and
3. While the offender is awaiting imposition of sentence after trial.

(b) The categories in par. (a) *include custody of the convicted offender which is in whole or in part the result of a probation or parole hold under s. 304.06(3) or 973.10(2) placed upon the person for the same course of conduct as that resulting in the new conviction.*

(Emphasis added.) Application of § 973.155 to undisputed facts “presents a question of statutory construction to which we apply an independent standard of review.” *State v. Pettis*, 149 Wis.2d 207, 209, 441 N.W.2d 247, 248 (Ct. App. 1989).

In this case the Notice of Violation listed four allegations as the bases for Taylor's parole revocation. The first stated, in part, that Taylor “took 74 CD's ... from Milwaukee County Federated Library System with intent to steal the CD's permanently.” It is undisputed that this allegation corresponds to the theft as a repeater offense to which Taylor ultimately pled guilty. Therefore, under the (b) of the statute, Taylor was in custody “in part the result of a ... parole hold ... placed upon [him] for the same course of conduct as that resulting in the new conviction” and, therefore, under (a) of the statute, Taylor must be awarded credit “for all days spent in custody in connection with the course of conduct for which sentence was imposed.”

Taylor acknowledges that the Notice of Violation was undated so, conceivably, there may be some uncertainty about the exact date on which the Notice was filed. Taylor comments, therefore, that “[t]his court could remand for further proceedings to determine exactly when the notice of violation was issued.”

This court declines to order such further proceedings. The uncertainty in the exact date would, at most, make a difference of a day or two given that parole holds customarily are filed immediately upon a parole officer learning that a parolee is in custody. Any additional uncertainty in this case would result from the fact that Taylor was on parole absconder status when taken into custody. Therefore, theoretically, it is possible that Taylor's parole hold initially resulted from his absconder status and/or other parole violations, exclusive of the library theft. Under the circumstances, however, Taylor reasonably argues that “the notice should be treated as, in effect, a presumptive enumeration of the reasons for the parole hold.”

Accordingly, this court remands this case to the trial court for entry of an order granting Taylor additional credit for the period from August 9, 1995 to September 14, 1995.

By the Court. – Judgment and order reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.