COURT OF APPEALS
DECISION
DATED AND FILED

June 21, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2338 **Cir. Ct. No. 2004CV1800**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. MANUEL MARTINEZ-MAZA,

PETITIONER-APPELLANT,

V.

DAVID M. SCHWARZ,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: ROBERT A. DeCHAMBEAU, Judge. *Affirmed.*

Before Lundsten, P.J., Higginbotham and Bridge, JJ.

¶1 PER CURIAM. Manuel Martinez-Maza appeals an order affirming a parole revocation. He contends that he was no longer under the jurisdiction of the State when revoked, and failed to receive all of the credit due against his remaining sentence. We affirm on both issues.

¶2 In 1989, Martinez-Maza received prison sentences totaling seventeen and one-half years. In 1995, the Department of Corrections released him on parole, subject to a federal detainer. The United States Immigration and Naturalization Service (INS) placed Martinez-Maza in federal custody until October 2002. In March 2004, the State Division of Hearings and Appeals revoked Martinez-Maza's parole for violations that occurred after his release from federal detention. The Division determined that more than ten years and seven months of Martinez-Maza's sentence remained available for reincarceration, and ordered him reincarcerated for two years and four months. The Administrator of the Division rejected Martinez-Maza's claim that his time available for reincarceration should be reduced by the almost seven years he spent in federal custody. Martinez-Maza appeals the order on certiorari review affirming the revocation decision.

¶3 Certiorari review for parole revocation is limited to whether: (1) the revoking agency stayed within its jurisdiction; (2) the agency acted according to law; (3) the agency's action was arbitrary, oppressive, or unreasonable, representing its will and not its judgment; and (4) the evidence was such that the agency might reasonably make the order or determination in question. ***State ex rel. Thorson v. Schwarz***, 2004 WI 96, ¶12, 274 Wis. 2d 1, 681 N.W.2d 914.

¶4 Martinez-Maza first contends that, when the State transferred custody of him to the INS, his sentence was effectively discharged and the State had no authority to reinstate the sentence when the INS released him from its custody. His argument rests on the false assumption that he was no longer on parole when transferred to federal custody. Although Martinez-Maza was not in the State's physical custody, the federal detention did not interfere with the State's legal custody over him as a parolee. A person remains on parole, and therefore

subject to revocation, until either the sentence expires or the Department of Corrections terminates the sentence by discharge. WIS. STAT. § 302.11(6) (2005-06).[1] Neither had occurred in Martinez-Maza's case at the time of his revocation.

¶5 We also conclude that the Division properly denied Martinez-Maza's claim to sentence credit for his federal detention. As the State points out, to receive credit against a sentence, an offender must be held in custody that is connected to the course of conduct for which sentence was imposed. WIS. STAT. § 973.155(1)(a). A person is "in custody" when subject to prosecution for escape under WIS. STAT. § 946.42. ***Thorson***, 274 Wis. 2d 1, ¶¶17-18. Because the State could not have prosecuted Martinez-Maza had he escaped from his federal detention, he was not "in custody" for purposes of Wisconsin's sentence credit statute. *See* ***id.***, ¶29. Additionally, while Martinez-Maza's 1989 Wisconsin conviction triggered the INS detention by virtue of federal law, that fact does not connect the federal detention to Martinez-Maza's Wisconsin course of conduct for sentence credit purposes. Detention under federal immigration law is a civil confinement. *See* ***United States v. Restrepo***, 999 F.2d 640, 646 (2nd Cir. 1993). Our supreme court has held that a civil confinement deriving from criminal conduct is not a confinement "in connection with" that conduct under § 973.155(1). *See* ***Thorson***, 274 Wis. 2d 1, ¶¶30-38.

¶6 The respondent has identified and discusses a Minnesota case that arguably supports Martinez-Maza's claim for sentence credit, ***State v. Hadgu***,

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

681 N.W.2d 30 (Minn. Ct. App. 2004). Martinez-Maza does not cite the case in his brief, and we agree with the respondent that ***Hadgu*** was wrongly decided.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.