

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 8, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2007AP2650-CR

Cir. Ct. No. 2007CF1445

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAYMOND L. MILLER,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JOSEPH R. WALL and KEVIN E. MARTENS, Judges.¹ *Affirmed.*

Before Curley, P.J., Wedemeyer and Fine, JJ.

¹ The Honorable Joseph R. Wall presided over Miller's motions for sentence credit in this case. Due to judicial rotation, the Honorable Kevin E. Martens considered and denied Miller's motion for reconsideration of Judge Walls's decisions.

¶1 PER CURIAM. Raymond L. Miller appeals *pro se* from orders denying his motions for sentence credit and an order denying his motion for reconsideration. The circuit court concluded that the days Miller spent in custody serving a sentence following revocation of probation should not be credited against a later-imposed concurrent sentence. We agree and affirm.

Background

¶2 Miller pled guilty in 2005 to one count of possessing a controlled substance with intent to deliver.² In January 2006, the circuit court imposed and stayed a three-year term of imprisonment for that offense, and placed Miller on probation for three years. On March 12, 2007, while serving his probation, Miller was arrested for the offense giving rise to this appeal: possessing a controlled substance with intent to deliver as a second or subsequent offense. He has been in custody since the date of his arrest.

¶3 On April 4, 2007, Miller's probation was revoked and he began serving the sentence imposed and stayed in 2006. On June 18, 2007, Miller pled guilty to possessing a controlled substance with intent to deliver as a second or subsequent offense. The matter proceeded immediately to sentencing, and the court imposed a four-year concurrent term of imprisonment. The court did not award Miller any presentence credit for his time in custody.

¶4 Miller filed two postconviction motions for presentence credit towards the 2007 sentence for his days in custody from March 12 through June 18,

² The Honorable Dennis P. Moroney presided over the proceedings arising in 2005. Those proceedings are not before the court in this appeal.

2007. The circuit court awarded Miller credit toward his sentence for days in custody from March 12 until April 4, 2007, when Miller's probation was revoked and he began serving the sentence imposed in 2006. The court concluded that Miller was not entitled to presentence credit for his days in custody subsequent to the probation revocation. The court denied Miller's motion for reconsideration, and this appeal followed.

Discussion

¶5 Miller's appeal requires application of the sentence credit statute, WIS. STAT. § 973.155 (2005–06),³ to undisputed facts. This is a question of law that we review *de novo*. See *State v. Tuescher*, 226 Wis.2d 465, 468, 595 N.W.2d 443, 445 (Ct. App. 1999).

¶6 WISCONSIN STAT. § 973.155(1) provides, in pertinent part:

Sentence credit. (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.

³ All references to the Wisconsin Statutes are to the 2005–06 version unless otherwise noted.

The statute entitles a defendant to credit toward a sentence for any custody that “is connected to the course of conduct for which the sentence [is] imposed.” *Tuescher*, 226 Wis. 2d at 470, 595 N.W.2d at 445 (citations omitted).

¶7 Where, as here, multiple sentences are imposed at different times, application of the statutory mandate can be complex. *Id.*, 226 Wis. 2d at 469–470, 595 N.W.2d at 445. Consequently, Wisconsin appellate courts have developed a body of case law applying the statute in various circumstances. We conclude, as did the circuit court, that this case is controlled by *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985).

¶8 “*Beets* held that a defendant serving a sentence imposed following a revocation of probation that was triggered by a new crime is not entitled to have time served under that sentence credited to his subsequent sentence for the new crime. [*Beets*], 124 Wis. 2d at 374–383, 369 N.W.2d at 383–387.” *State v. Riley*, 175 Wis. 2d 214, 219, 498 N.W.2d 884, 885–886 (Ct. App. 1993). From April 4 until June 18, 2007, Miller was serving a sentence after a probation revocation triggered by a new, but unresolved, criminal charge. Pursuant to *Beets*, Miller is not entitled to presentence credit towards the sentence imposed on June 18, 2007 for days spent in custody between April 4 and June 18, 2007.

¶9 When a defendant is in custody on a probation hold and simultaneously faces a new charge, any connection between custody for the two offenses is “severed when the custody resulting from the probation hold [is] converted into a revocation and sentence.” *Beets*, 124 Wis. 2d at 379, 369 N.W.2d at 385. In this constellation of facts, there is “no logical reason why credit should be given on the [later arising] charge for [the defendant’s] service of sentence on a separate crime.” *Ibid.*

¶10 Miller suggests that this case is not governed by *Beets* but is instead governed by *State v. Yanick*, 2007 WI App 30, 299 Wis. 2d 456, 728 N.W.2d 365. We disagree. *Yanick* addresses the award of sentence credit when a defendant is serving a sentence and concurrently serving jail time ordered as a condition of probation. See *id.*, 2007 WI App 30, ¶¶4, 22, 299 Wis. 2d at 460, 468, 728 N.W.2d at 367–368, 372. That situation is not analogous to the facts here. As the *Yanick* court noted, it is *Beets* that addresses “time in custody serving a sentence and awaiting disposition on a separate crime.” *Yanick*, 2007 WI App 30, ¶22, 299 Wis. 2d at 468, 728 N.W.2d at 372.

¶11 We are similarly unpersuaded by Miller’s contention that his situation is governed by *State v. Ward*, 153 Wis. 2d 743, 452 N.W.2d 158 (Ct. App. 1989). In that case, the circuit court imposed three concurrent sentences contemporaneously. *Ward* stands for the now well-settled rule that, when multiple concurrent sentences are imposed at the same time, presentence credit is awarded toward each sentence. See *Tuescher*, 226 Wis. 2d at 469, 595 N.W.2d at 445 (discussing the holding of *Ward*). In Miller’s case, the sentences were imposed at different times. *Ward* is inapplicable.

¶12 Miller began serving the sentence imposed and stayed in 2006 on April 4, 2007. See *State v. Boettcher*, 144 Wis. 2d 86, 88, 423 N.W.2d 533, 534 (1988) (stayed sentence begins to run on date of revocation order). Pursuant to *Beets*, Miller’s custody was, as of April 4, 2007, solely in connection with that sentence, and not in connection with the pending 2007 charge. See *Beets*, 124 Wis. 2d at 379, 369 N.W.2d at 385. The circuit court properly denied Miller presentence credit for days he spent in custody from April 4, 2007 until disposition of the 2007 charge.

By the Court.—Orders affirmed.

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

