

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 10, 2009**

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. 2008AP883-CR**

**Cir. Ct. No. 2006CF950**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DOUGLAS B. BAKER,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Eau Claire County:  
BENJAMIN D. PROCTOR, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Douglas Baker, pro se, appeals from an order denying sentence credit. We conclude that during the time period for which he seeks credit, Baker was in custody serving a sentence that had no connection with the sentence in this case. We therefore affirm the order.

¶2 On December 19, 2006, Baker was arrested and subsequently charged with substantial battery, disorderly conduct and misdemeanor battery. Baker was accused of grabbing a woman by the throat and throwing her to the ground while leaving a bar in Eau Claire. Baker then allegedly grabbed another woman and shoved her to the ground, causing her face to hit the pavement. When the woman stood up, Baker punched her in the mouth, resulting in a broken front tooth and other serious injuries. Baker pled no contest to substantial battery and the remaining charges were dismissed and read in.

¶3 Baker was on probation at the time for an unrelated burglary case. Probation was revoked and Baker began serving a sentence in that case on February 2, 2007. *State v. Baker*, Eau Claire County case No. 1994CF122.

¶4 On October 2, 2007, the circuit court sentenced Baker in the present case to eighteen months' initial confinement and two years' extended supervision. The court did not initially award sentence credit. Baker thereafter apparently wrote the circuit court a letter requesting 289 days of sentence credit. The circuit court awarded forty-five days of credit, pursuant to calculations the State submitted, which represented the time period from custody up to the date of the probation revocation sentence. Baker then requested 244 days of additional credit. Baker now appeals from the order denying that request for credit.

¶5 At issue is whether Baker is entitled to sentence credit in this case for the days spent in custody from the February 2 revocation sentence to the date he began serving the sentence on the substantial battery conviction, October 2, 2007. The application of the sentence credit statute, WIS. STAT. § 973.155,<sup>1</sup> to

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<sup>1</sup> Reference to Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

undisputed facts presents a question of law that we review independently. *See State v. Tuescher*, 226 Wis. 2d 465, 468, 595 N.W.2d 443 (Ct. App. 1999).

¶6 WISCONSIN STAT. § 973.155(1) provides in part as follows:

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 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.

¶7 The statute entitles a defendant to credit for pre-sentence custody that “is connected to the course of conduct for which the sentence [is] imposed.” *Tuescher*, 226 Wis. 2d at 470 (citations omitted). The statute also includes time spent serving “any other sentence arising out of the same course of conduct” as the newly imposed sentence. *Id.*

¶8 We conclude this case is controlled by *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985). Beets was serving a sentence imposed following a probation revocation that was triggered by a new crime. The court held Beets was not entitled to have time served under that sentence credited to his subsequent sentence for the new crime. *See id.* at 374-83. Unless the acts for which the two sentences are imposed arise out of the same “course of conduct,” the sentencing on the revocation “severs” the connection between the probation hold and the new charges. *See id.* at 382-83.

¶9 Here, Baker began serving his sentence following the probation revocation on February 2, 2007. Baker was sentenced for substantial battery on October 2, 2007. Baker was not entitled to credit toward his new crime for days spent in custody following probation revocation because the sentences did not arise out of the same “course of conduct.” From the date of the revocation sentencing until he began serving the sentence on his new conviction, he was in custody by reason of his probation revocation. When Baker began serving his burglary sentence following probation revocation, any connection to the substantial battery proceedings was severed. Baker was therefore correctly credited time only for the forty-five days spent in custody between December 19, 2006, and the date of his probation revocation sentence, February 2, 2007. *See id.* at 383.

¶10 Baker suggests this case is controlled by *State v. Gilbert*, 115 Wis. 2d 371, 340 N.W.2d 511 (1983). However, *Gilbert* involved only a single case, and there was no issue as to whether the defendant was in custody “in connection with the course of conduct” for which he sought credit. *Id.* at 377-80.

¶11 Baker also relies on *State v. Boettcher*, 144 Wis. 2d 86, 99-100, 423 N.W.2d 533 (1988). That case holds that credit cannot be given on consecutive sentences for the same period of time. *Id.* at 90. *Boettcher* does not contradict the holding in *Beets*.

¶12 Baker misinterprets the holding in *State v. Rohl*, 160 Wis. 2d 325, 466 N.W.2d 208 (Ct. App. 1991). In that case, the defendant sought credit for time served in California while he was on a Wisconsin parole. *Id.* at 328. Rohl committed crimes in California, was detained prior to trial, and received full credit for that time on his California sentence before being returned to Wisconsin, where

his parole was revoked. *Id.* The court held sentence credit was not required in Wisconsin, because Rohl had already been granted sentence credit toward his California sentence. *Id.* at 332. The holding in *Rohl* does not support Baker's argument.

¶13 We are similarly unpersuaded by Baker's contention this case is governed by *State v. Ward*, 153 Wis. 2d 743, 452 N.W.2d 158 (Ct. App. 1989). *Ward* presented the relatively straightforward situation where multiple sentences are imposed at the same time. See *Tuescher*, 226 Wis. 2d at 469. If the sentences are concurrent, time spent in presentence custody is credited toward each sentence. *Id.* In the present case, multiple sentences were imposed at different times. *Ward* is inapplicable.<sup>2</sup>

¶14 Accordingly, we affirm the order denying Baker sentence credit for the period from the date of the sentencing following his probation revocation up to the date he began serving the sentence on the substantial battery conviction.

*By the Court.*—Order affirmed.

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

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<sup>2</sup> *Ward* was clarified in *State v. Johnson*, 2008 WI App 34, 307 Wis. 2d 735, 746 N.W.2d 581, *rev. granted*, 2008 WI 40, 308 Wis. 2d 609, 749 N.W.2d 661. That case held that even when concurrent sentences are imposed at the same time, the “in connection with” requirement applies to each sentence individually. *Johnson*, 307 Wis. 2d at 736; *State v. Ward*, 153 Wis. 2d 743, 452 N.W.2d 158 (Ct. App. 1989). A petition for review in *Johnson* was accepted and oral argument was held on September 12, 2008.



