

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 6, 2003

Cornelia G. Clark
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. 02-1164
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-227

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN EX REL. MICHEAL LOCKLEAR,

PETITIONER-APPELLANT,

V.

**JON LITSCHER, SECRETARY, DEPARTMENT OF
CORRECTIONS, AND JODY BRADLEY, WARDEN, NORTH
FORK CORRECTIONAL FACILITY,**

RESPONDENTS-RESPONDENTS.

APPEAL from orders of the circuit court for Dodge County: JOHN R. STORCK, Judge. *Affirmed.*

Before Dykman, Roggensack and Lundsten, JJ.

¶1 PER CURIAM. Micheal Locklear appeals from orders dismissing his habeas corpus petition. The issues relate to computation of Locklear's sentences. We affirm.

¶2 Locklear filed a petition for writ of habeas corpus in December 2000. The named respondent was Secretary of Corrections Jon Litscher. Locklear alleged that he was being detained beyond his maximum discharge date. The court issued the writ, which resulted in a return of the record pertaining to the charges for which the department believed Locklear was currently in custody. Locklear submitted a traverse to the return, containing copies of documents related to earlier sentences. The circuit court quashed the writ and dismissed the petition.

¶3 Locklear makes a number of arguments. At least some of them appear to be attempts to show that he should not be serving his current prison sentences, which became effective after revocation of probation, because he believes he was prematurely discharged from earlier sentences, and therefore should not yet have been serving the probation that was revoked. In other words, he believes his revocation should have been for only the remainder of his parole time on the previous sentence, and not for the probation on his current sentence. This puts Locklear in the unusual position of arguing that the time he served on his earlier sentences was improperly short.

¶4 Locklear's first argument appears to be that Department of Corrections officials erred by one week in calculating one of his earlier sentences because they used a parole violation date of January 10, 1994, rather than January 17, 1994. He argues that this error "appears to impeach and render unreliable" all of the department's calculations, but he does not explain how this one-week difference might have any practical effect on his current incarceration. A general assertion of impeachment and unreliability unsupported by legal authority is not grounds for relief. See *State v. Petit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992).

¶5 Locklear argues that the department failed to provide him with a discharge certificate from two of his earlier sentences, contrary to its own rules. However, even if this were true, we see no connection between this fact and the relief he seeks from his current sentences.

¶6 Locklear argues that when his parole was revoked in 1994, the department included an already-expired sentence from 84-CR-472 in its calculation of the time he had remaining to serve. Litscher correctly points out that the allegedly expired sentence was one of two on which Locklear was revoked, and that the second sentence, which was concurrent, had a longer remaining time on it, and therefore was the controlling sentence, even if 84-CR-472 should not have been included.

¶7 Locklear argues that he “was not and should not have been” given sentence credit for time served while on parole in 1993 and 1994 in the Division of Intensive Sanctions (DIS). This argument is confusing, because if he did not receive such credit, and should not have received such credit, there is no error. However, whatever argument Locklear intended here, he was entitled to credit for the time in DIS. Whether a person was “in custody” for the purpose of receiving sentence credit is determined by whether the person was subject to a criminal charge of escape for leaving that status. *State v. Magnuson*, 2000 WI 19, ¶31, 233 Wis. 2d 40, 606 N.W.2d 536. Locklear was subject to an escape charge for leaving the DIS program. WIS. STAT. § 301.048(5) (1991-92). Locklear received such credit for the period he was in DIS, up to the date of his violation.

¶8 Locklear argues that the department improperly gave him credit against his state sentences for time he spent on state parole, but in federal prison on a federal conviction. Locklear does not present any authority that prevents that

result, but even if his argument were correct, he does not explain how this error would have affected the revocation of probation that resulted in his current incarceration.

¶9 Finally, Locklear argues that he should not have received credit for six months that he was, according to him, in absconder status from parole. He makes this argument with respect to the period after he was released from federal custody, up to his arrest in January 1997. He argues that the department discharged him from his sentence during that time, but should not have, because he had absconded, rather than properly serving out his parole. However, Litscher points out that even if Locklear should not have been discharged, his absconding was not long enough that he still would have been on that parole on the date of his most recent violation that led to revocation of probation. In other words, the error would have no effect on Locklear's current incarceration, because even if the department erred, Locklear's most recent revocation still would have been from probation, not the previous parole.

By the Court.—Orders affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

