

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 3, 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. 02-3380

Cir. Ct. No. 02-CV-492

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN EX REL. MICHAEL J. THORSON,

PETITIONER-APPELLANT,

v.

**DAVID H. SCHWARZ, ADMINISTRATOR, DIVISION OF
HEARING & APPEALS,**

RESPONDENT-RESPONDENT.

APPEAL from a judgment of the circuit court for Eau Claire County: WILLIAM M. GABLER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Michael Thorson appeals a judgment rejecting his request for sentence credit based on time he was detained for a WIS. STAT. ch. 980 proceeding. Because we conclude that Thorson was not entitled to sentence credit, we affirm the judgment.

¶2 Thorson was initially sentenced to thirteen years in prison for attempted second-degree sexual assault and false imprisonment. Upon reaching his mandatory release date, he was not released on parole. Rather, the State commenced an action to commit Thorson as a sexually violent person under WIS. STAT. ch. 980 and transferred him to Mendota Mental Health Institute (MMHI) for further evaluation. A jury ultimately determined that Thorson was not a proper candidate for a ch. 980 commitment and he was released from MMHI and placed on parole status. He violated his parole by having unauthorized contact with a child and was returned to prison to complete his sentence. He now seeks sentence credit for the one-hundred-seventy days he was confined between his initial release from prison and dismissal of the ch. 980 proceedings.

¶3 A convicted offender is given credit towards service of his sentence for all days spent in custody in connection with the course of conduct for which the sentence was imposed. *See* WIS. STAT. § 973.155(1)(a) (2001-02). We need not determine whether Thorson was “in custody” because we conclude that his detention for evaluation and trial in the WIS. STAT. ch. 980 proceeding was not in connection with the course of conduct for which his sentences were imposed.

¶4 While conviction of a sexually violent offense is a prerequisite, the detention for a WIS. STAT. ch. 980 evaluation is not a direct consequence of the crime. In fact, a ch. 980 commitment can occur upon completion of the entire sentence. *See* WIS. STAT. § 980.02(2)(ag). WISCONSIN STAT. ch. 980 commitments are a separate civil matter. *See State v. Carpenter*, 197 Wis. 2d 252, 258, 541 N.W.2d 105 (1995). The evaluation process was to determine whether Thorson would be civilly committed as a sexual predator. It was not a part of his trial or punishment for the crimes he committed or for the additional time he will serve as a result of his parole revocation.

¶5 Thorson argues that he has a due process right to sentence credit. Fundamental fairness can require that a prisoner be credited with time served. *See State ex rel. Solie v. Schmidt*, 73 Wis. 2d 76, 82, 242 N.W.2d 244 (1976). None of the cases Thorson cites, however, support the proposition that fundamental fairness requires sentence credit for the time he was detained in an independent, post-sentence, civil commitment proceeding. We perceive no unfairness in keeping these unrelated cases separate.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2001-02).

