

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 14, 2011

A. John Voelker
Acting 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. 2010AP1918-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2009CF191

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PASCANELL CHEATHAM,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: JOHN D. MCKAY, Judge. *Judgment and order reversed and cause remanded with directions.*

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

¶1 PER CURIAM. Pascanell Cheatham appeals an amended judgment of conviction and an order granting fifty-seven days' sentence credit but denying Cheatham's request for an additional fifty-four days' credit. Because we conclude

that Cheatham is entitled to the additional fifty-four days' credit, we reverse the judgment and order and remand the matter with directions to grant the additional credit.

¶2 Cheatham was on extended supervision for hit and run and driving a vehicle without the owner's consent when he committed additional offenses. On June 21, 2008, he was arrested for battery. Six days later, Probation and Parole was informed of a sexual assault Cheatham committed on June 20. On July 16, Cheatham was served with notice that he had violated the conditions of his extended supervision by committing battery, drinking alcohol, committing a sexual assault and battering another inmate. Cheatham's extended supervision was revoked on September 8, based in part on the sexual assault. On October 23, the court ordered Cheatham reconfined based on the revocation, and Cheatham was transferred from the jail to a state correctional institution on November 13. His sentence on the battery charge commenced November 3, 2008. On January 11, 2010 the court imposed a concurrent sentence on the sexual assault. Cheatham's motion sought sentence credit on the sexual assault charge from July 16, the date he was served with revocation papers, until November 3, when he began serving the battery sentence.

¶3 A convicted offender is entitled to sentence credit for all days spent in custody in connection with the course of conduct for which the sentence was imposed. WIS. STAT. § 973.155.¹ Cheatham was entitled to the entire 111 days' sentence credit because he was held in custody in connection with the sexual assault from the date he was served with the revocation papers that listed the

¹ All references to the Wisconsin Statutes are to the 2009-10 version.

sexual assault as a basis for revocation until he began serving the battery sentence. The extended supervision hold was based at least in part on the sexual assault allegation. When a new crime is one of the reasons for placing a prisoner on an extended supervision hold, sentence credit must be granted even though the hold was based in part on other allegations. *State v. Hintz*, 2007 WI App 113, ¶¶9-10, 300 Wis. 2d 583, 731 N.W.2d 646.

¶4 The State argues that, under *State v. Johnson*, 2007 WI 107, 304 Wis. 2d 318, 735 N.W.2d 505, an inmate is not in custody “in connection with” an offense unless the new charge was a large factor leading to the confinement.² The State contends *Johnson* limited *Hintz* by clarifying that, if the defendant would have been in custody regardless, his confinement for new crimes is irrelevant and not connected to the custody. In this case, the State argues, Cheatham would have been placed on the extended supervision hold regardless of whether the sexual assault allegation had been made.

¶5 We do not read *Johnson* to restrict the holding in *Hintz*. In *Johnson*, an incarcerated juvenile committed a battery and was charged as an adult. The court concluded that he was not entitled to sentence credit from the date he was charged until the term of his commitment expired because he was serving time based on the juvenile commitment. *Johnson* 304 Wis. 2d 318, ¶9. The juvenile court later extended Johnson’s supervision. The court concluded that

² The State also contends that Cheatham is not entitled to credit from September 8 when his extended supervision was revoked to November 3 when he began serving the sentence for battery. It argues that any connection that might have existed between the sexual assault allegation and Cheatham’s incarceration was severed once the extended supervision hold was converted to a revocation and sentence. That issue is not properly before this court because the State did not file a notice of cross-appeal. A respondent must file a notice of cross-appeal before it can challenge the judgment. *See* WIS. STAT. RULE 809.10(2)(b).

Johnson was not entitled to credit during the extended placement order because the battery did not play a large role in the juvenile court's decision to extend the placement. The battery constituted only one of 233 charges that Johnson accumulated during his 497 days in secure detention. *Id.* ¶4.

¶6 We recognized the limited scope of *Johnson* in *State v. Carter*, 2007 WI App 255, ¶29, 306 Wis. 2d 450, 743 N.W.2d 700. Whether a juvenile would have had his or her secure detention placement renewed regardless of one specific allegation is not comparable to revocation of probation, parole or extended supervision, especially when the hold listed the offense as a basis for revocation.

¶7 The Wisconsin Supreme Court slightly modified and affirmed our decision in *Carter*. See *State v. Carter*, 2010 WI 77, ¶¶35-37, 306 Wis. 2d 450, 743 N.W.2d 700. Its decision shows that *Johnson* was not intended to overrule *Hintz*.

By the Court.—Judgment and order reversed and cause remanded with directions.

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

