

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 23, 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. 2010AP2362-CR**

**Cir. Ct. No. 2008CF5048**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOSHUA G. TOWNS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: REBECCA F. DALLET, Judge. *Affirmed.*

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

¶1 PER CURIAM. Joshua G. Towns appeals from a judgment of conviction, entered upon his guilty plea, on two counts of first-degree intentional

homicide as party to a crime. He also appeals from an order denying his motion to modify his sentence and vacating 162 days of sentence credit. The sole issue on appeal is whether the circuit court erroneously vacated the credit. We affirm.

¶2 Towns pled guilty to two counts of first-degree intentional homicide on November 13, 2009. The circuit court imposed concurrent life sentences and set a parole eligibility date of November 13, 2050, then awarded 162 days' sentence credit.

¶3 According to the postconviction motion, counsel asked the Department of Corrections for Towns's parole eligibility date. He was advised that it is November 13, 2050, as set by the circuit court, and that the sentence credit does not change that date. Consequently, Towns moved to modify his sentence in such a manner as to give effect to the 162 days' credit as ordered by the circuit court.

¶4 The circuit court denied the motion, explaining that its intent was that Towns not be released prior to November 13, 2050. It also explained that the statutes governing extended supervision for offenders serving life sentences does not permit sentence credit. Thus, it denied the motion. Towns appeals.

¶5 Sentencing is committed to the circuit court's discretion. *See State v. Gallion*, 2004 WI 42, ¶17, 270 Wis.2d 535, 678 N.W.2d 197. Sentence modification is committed to the circuit court's discretion. *See State v. Crochiere*, 2004 WI 78, ¶12, 273 Wis.2d 57, 681 N.W.2d 524. We do not overturn discretionary decisions unless discretion was erroneously exercised. *See Gallion*, 270 Wis. 2d 535, ¶17.

¶6 On appeal, Towns contends the circuit court erred in denying his motion to modify his sentence and vacating the sentence credit because the circuit court had originally followed proper procedure—determining a sentence, then awarding credit—and because the cancellation of sentence credit merely reflected a change of the court’s mind about what the sentence should be. *See State v Walker*, 117 Wis. 2d 579, 581, 345 N.W.2d 413 (1984) (proper sentencing practice); *see also Scott v. State*, 64 Wis. 2d 54, 59, 218 N.W.2d 350 (1974) (court may not revise sentence merely upon reflection). Towns also contends that *State v. Seeley*, 212 Wis. 2d 75, 567 N.W.2d 897 (Ct. App. 1997), contemplates the possibility of sentence credit being applied to life sentences.

¶7 *Seeley*, which was actually addressing an equal protection argument relating to sentence credit and indigency status, simply indicated that in an appropriate exercise of discretion, the circuit court “may, or it may not,” give actual credit for presentence incarceration to individuals being given a life sentence. *See id.* at 85-88. The simple reality is that the statutes control here, and under the statutes, Towns is not entitled to sentence credit.

¶8 WISCONSIN STAT. § 973.014(1g)(a) (2009-10)<sup>1</sup> gives the circuit court three options when it imposes a life sentence: to determine the person is ineligible for extended supervision; to determine the person is eligible for extended supervision after twenty years; or to determine a person is eligible for extended supervision on a date set by the court. While Towns points out that under WIS. STAT. § 973.155(1)(a), a convicted offender “shall be given credit ...

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

for all days spent in custody[.]” inmates serving life sentences are exempt from that requirement. *See* WIS. STAT. § 304.06(1)(b) (credit for persons serving life terms being released to supervision after twenty years but excluding inmates sentenced under WIS. STAT. § 973.014(1g)); *State v. Chapman*, 175 Wis. 2d 231, 247, 499 N.W.2d 222 (Ct. App. 1993).

¶9 Further, WIS. STAT. § 302.114(2), relied upon by the circuit court in revising Towns’s sentence, specifies that an inmate may petition for release to extended supervision “*after* he or she has reached the extended supervision eligibility date set by the court[.]” (Emphasis added.) Sentence credit is not a constitutional entitlement but, rather, is granted through a matter of legislative grace. *See Chapman*, 175 Wis. 2d at 247. There is no mention in § 302.114(2) of sentence credit applying to change a release eligibility date.

¶10 Indeed, we have previously concluded that public policy is “frustrated by giving a defendant credit for presentence incarceration after the [circuit] court establishes a parole eligibility date.” *Chapman*, 175 Wis. 2d at 248. We see no reason why the same concern does not exist when it is an extended supervision, rather than parole, date.

¶11 As such, we do not agree that the circuit court erroneously exercised its discretion when it denied Towns’s postconviction motion and vacated the credit. Here, the grant of credit would run contrary to, or not be enforceable under, WIS. STAT. § 302.114(2). While Towns complains that the circuit court’s alteration of the sentence makes the credit grant meaningless, such will always be the case when a court imposes contradictory, or incorrect, conditions. The circuit court was allowed to make the corrections to its sentence. *See Crochiere*, 273 Wis. 2d 57, ¶12.

*By the Court.*—Judgment and order affirmed.

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

