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DISTRICT II

July 3, 2024

To:

Hon. Mark F. Nielsen
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Patricia J. Hanson
Racine County District Attorney's Office
730 Wisconsin Ave.
Racine, WI 53403

Christina C. Starner
Electronic Notice

Daniel E. Monge
1523 S. 11th St.
Milwaukee, WI 53204

You are hereby notified that the Court has entered the following opinion and order:

2023AP224-CRNM State of Wisconsin v. Daniel E. Monge (L.C. #2019CM435)

Before Lazar, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Daniel E. Monge appeals an order denying his motion for sentence credit. Monge's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Monge was advised of his right to file a response, and he has not responded. After reviewing the Record and counsel's report, we conclude that there are no

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

issues with arguable merit for appeal. Therefore, we summarily affirm the order. *See* WIS. STAT. RULE 809.21.

On March 7, 2019, Monge was arrested after he provided an officer with a false name and was driving with a revoked license. The State charged him with obstructing an officer as a repeater and operating a motor vehicle while revoked. Monge posted cash bail, and on March 26, he was released from jail. After he did not appear at the next hearing, a statewide bench warrant was issued and his cash bail was ultimately revoked.

Monge was arrested in Chicago in November 2019. He was extradited to Milwaukee County on separate criminal matters and booked into the Milwaukee County Jail on December 20, 2019. Racine County placed a detainer on Monge on December 20, 2019.

A return on the Racine County warrant was scheduled for April 2020. However, because of the COVID-19 pandemic and emergency procedures, the Racine County circuit court did not have a return on warrant hearing until July 2020. Monge finished serving his Milwaukee County sentence on July 22, 2020, and was then brought to the Racine County Jail on the detainer. The Racine County circuit court held the return on warrant hearing on July 31, 2020, and ordered \$250 cash bond on this case. Monge posted bond that same day and was released from jail.

On March 31, 2021, Monge was convicted following his no contest plea of obstructing an officer as a repeater. The operating with a revoked license charge was dismissed and read in. At sentencing, Monge argued he should get credit for the time he spent in custody in Milwaukee, and the circuit court explicitly refused to fashion a sentence that would give him credit for the time served in Milwaukee on another case. The circuit court imposed and stayed a prison sentence of eighteen months' initial confinement and six months' extended supervision and put

Monge on probation for two years. The circuit court gave Monge twenty-nine days' sentence credit consisting of the time from March 7, 2019 (when Monge was arrested in this case) to March 26, 2019 (when Monge was released from jail on bond), and from July 23, 2020 (the day after he finished serving his Milwaukee sentence) to July 31, 2020 (the day he was released from jail on bond). Monge did not pursue postconviction relief.

Monge was revoked from probation. On December 3, 2021, Monge filed a pro se motion seeking approximately eight months of additional sentence credit. Specifically, he claimed he was entitled to credit from the time he was arrested in Chicago in November 2019 until he finished serving his Milwaukee sentence on July 22, 2020.

The circuit court denied Monge's motion for sentence credit. The court noted that the issue had been discussed at sentencing and during those eight months Monge was serving a sentence in Milwaukee.

Monge filed a notice of intent to pursue postconviction relief from the circuit court's denial of his motion for sentence credit. *See* WIS. STAT. § 973.155(6) ("A defendant aggrieved by a determination by a court under this section may appeal in accordance with [WIS. STAT. RULE] 809.30."). The State Public Defender's Office appointed counsel.

As reflected in the no-merit report, the scope of this appeal is limited to the issue of whether Monge is entitled to the approximate eight months of additional sentence credit. Counsel concludes in the no-merit report that the issue lacks arguable merit.

We agree. For sentence credit to be awarded, a defendant must show that he or she was "in custody" and that "the custody 'was in connection with the course of conduct for which the

sentence was imposed.”” *State v. Friedlander*, 2019 WI 22, ¶23, 385 Wis.2d 633, 923 N.W.2d 849 (citing WIS. STAT. § 973.155(1)(a)). A defendant is not entitled to sentence credit for days of presentence custody during which he was also serving a sentence. *State v. Beets*, 124 Wis. 2d 372, 385, 369 N.W.2d 382 (1985). Here, the Record reflects that Monge was serving a sentence in Milwaukee County. When he completed his Milwaukee sentence, he was in custody based on Racine’s warrant and the circuit court properly gave him credit for that time. There is no arguable merit to this issue that he should get an additional eight months’ sentence credit.

Our independent review of the Record discloses no other potential issues for appeal in this sentence credit case. This court accepts the no-merit report, affirms the order denying sentence credit, and discharges appellate counsel of the obligation to represent Monge further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Christina C. Starner is relieved from further representing Daniel E. Monge in this appeal. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals