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DISTRICT I

August 20, 2024

To:

Hon. David A. Hansher
Circuit Court Judge
Electronic Notice

Jacob J. Wittwer
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Roosevelt J. Rayford 531099
2867 N. 48th Street
Milwaukee, WI 53206

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

2023AP471-CR

State of Wisconsin v. Roosevelt J. Rayford (L.C. # 2019CF61)

Before Donald, P.J., Geenen and Colón, JJ.

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).

Roosevelt J. Rayford, *pro se*, appeals orders denying his postconviction motion for sentence credit and his motion for reconsideration. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Background

According to the complaint, which formed the factual basis for Rayford's subsequent guilty plea, on January 2, 2019, Rayford drove a car at night with its headlights off, ran a stop sign, and nearly collided with another vehicle. Officers observed the erratic driving. When the officers tried to make a traffic stop, Rayford kept driving. He led police on a chase, which ended when Rayford crashed his car into a parked vehicle. At the time of these events, Rayford was on extended supervision in three other cases.

Officers took Rayford into custody and he was charged in the present case with operating a vehicle to flee or elude an officer while causing property damage as a repeat offender. On April 15, 2019, the Division of Hearings and Appeals (the Division) issued a Revocation Order and Warrant revoking Rayford's extended supervision. The Division ordered him reconfined for just under three years. Rayford was granted sentence credit towards his revocation sentence for jail custody "[f]rom 01/02/19 until his receipt at the institution."

At his April 24, 2019 plea and sentencing hearing in the present case, Rayford pled guilty to the count of fleeing an officer as charged. The circuit court sentenced Rayford to two years of initial confinement and two years of extended supervision. The court ordered that the sentence be served consecutively to the revocation sentence.

Rayford, *pro se*, filed a postconviction motion seeking sentence credit for the time he spent in custody between his January 2, 2019 arrest and his sentencing. In denying the motion, the circuit court explained:

No credit was granted in this case because the court imposed a consecutive sentence. See *State v. Boettcher*, 144 Wis. 2d 86, 423

N.W.2d 533 (1988) (dual credit on a consecutive sentence is not permitted). Pursuant to *Boettcher*, the defendant is not entitled to duplicate credit towards his consecutive sentence in [this case], and therefore, the court will not consider a request for sentence credit in this case unless the defendant provides documentation showing that he did not receive credit towards his revocation sentence.

(Footnote omitted.)

Rayford sought reconsideration. The circuit court again denied his motion, but elaborated:

On April 15, 2019, the defendant's extended supervision was revoked in cases 08CF000706, 09CF003516, and 10CF00480. The revocation order and warrant demonstrates *definitively* that the defendant was given credit towards his reconfinement term from January 2, 2019, until his receipt at the institution.... He is not entitled to credit for the same period in [this case] because the sentence is consecutive. See *State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988) (dual credit on a consecutive sentence is not permitted). The defendant's reliance on *State v. Presley*, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713 is misplaced. *Presley* did not involve a concurrent [sic] sentence, as here. If the defendant disagrees with the court's decision in this matter, he may file an appeal.²

(One footnote omitted.) Rayford took the circuit court's advice, and this appeal follows.

Discussion

Rayford continues to argue that he is entitled to sentence credit under WIS. STAT. § 973.155. Whether the statute entitles a defendant to credit based on a given set of facts is a question of law that we review *de novo*. See *State v. Rohl*, 160 Wis. 2d 325, 329, 466 N.W.2d 208 (Ct. App. 1991).

² The circuit court's written decision and order denying reconsideration incorrectly referenced Rayford's sentences as being concurrent instead of consecutive. However, the context of the court's other statements makes clear that this was an inadvertent misstatement.

WISCONSIN STAT. § 973.155(1)(a) provides that a convicted offender is entitled to sentence credit for all days spent in custody “in connection with the course of conduct for which sentence was imposed.” In *Boettcher*, the Wisconsin Supreme Court read § 973.155 to provide that “custody credits should be applied in a mathematically linear fashion. The total time in custody should be credited on a day-for-day basis against the total days imposed[.]” See *Boettcher*, 144 Wis. 2d at 100. The *Boettcher* court held that double counting or “dual credit” for the same period of custody is unavailable on nonconcurrent sentences. See *id.* “The core idea of *Boettcher* is that ‘dual credit is not permitted’ where a defendant has already received credit against a sentence which has been, or will be, separately served.” *State v. Jackson*, 2000 WI App 41, ¶19, 233 Wis. 2d 231, 607 N.W.2d 338 (quoting *Boettcher*, 144 Wis. 2d at 87).

Given that the April 15, 2019 Revocation Order and Warrant shows Rayford had already received credit for the custody at issue, he was not entitled to dual credit for the same custody in this case. The State points out that while it is unclear from the record if Rayford began serving his revocation sentence before or after this April 24, 2019 sentencing, the ambiguity does not matter for purposes of sentence credit. If the revocation sentence began on or after Rayford’s April 24th sentencing, credit is unavailable under *Boettcher*. Likewise, credit is not available if Rayford began serving the revocation sentence sometime between the April 15th Revocation Order and the April 24th sentencing. A defendant is not entitled to sentence credit “for custody that is being served in satisfaction of another unrelated criminal sentence.” *State v. Gavigan*, 122 Wis. 2d 389, 393, 362 N.W.2d 162 (Ct. App. 1984); see *State v. Beets*, 124 Wis. 2d 372, 380-81, 369 N.W.2d 382 (1985).

To the extent Rayford makes other arguments in his appellate brief, they are difficult to discern. Consequently, we deem the arguments undeveloped and conclude that they do not

warrant further discussion. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining that we may decline to review undeveloped legal arguments). Moreover, by failing to file a reply brief refuting the State’s position, Rayford conceded that the State’s position is correct. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

Therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals