

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

September 11, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2755-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EDUARDO PEREZ,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County:
MICHAEL J. MULROY, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Deininger, J.

PER CURIAM. Eduardo Perez appeals an order denying his postconviction motion for sentence credit. The issue is whether Perez is entitled to sentence credit for the seventeen months he was in custody from the date of his arrest to the date he was sentenced. We conclude that he is not because the

connection between his custody and the pending criminal charge was severed by an unrelated sentence. Therefore, we affirm.

Perez was arrested in La Crosse County on July 10, 1989. On November 14, 1990, a jury found Perez guilty and he was transferred from the La Crosse County jail to prison, to await sentencing on January 18, 1991. However, Perez was sentenced in January 1990, by the Monroe County Circuit Court on an unrelated crime.¹ Perez contends that he is entitled to credit on his La Crosse County sentence for the time he spent in custody on the unrelated Monroe County charge.

Perez moved for sentence credit. The circuit court credited him 273 days.² Perez then moved for additional sentence credit for the entire seventeen months preceding the La Crosse County Circuit Court's imposition of sentence. The circuit court denied Perez's motion for that additional credit.

The sentence credit statute provides, in pertinent part:

A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed. As used in this subsection, "actual days spent in custody" includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other

¹ The record of the Monroe County Circuit Court case was not appended to the record in this case. However, the court minutes for January 30, 1990, in the record in this case contain the following entry: "[Perez was] sentenced to prison in Monroe Co[unty] and was given credit since 8-7-89 so [the La Crosse County] DA should keep this in mind." This reference confirms that Perez was sentenced on an unrelated crime in Monroe County on or before January 30, 1990.

² Although it is debatable whether Perez was entitled to all of the sentence credit which he was given, we do not address that issue. See *State v. Riley*, 175 Wis.2d 214, 221 n.3, 498 N.W.2d 884, 886 (Ct. App. 1993) (citing *Blackledge v. Perry*, 417 U.S. 21, 27-28 (1974)).

sentence arising out of the same course of conduct, which occurs:

1. While the offender is waiting trial;
2. While the offender is being tried; and
3. While the offender is awaiting imposition of sentence after trial.

Section 973.155(1)(a), STATS.

This case involves application of the sentence credit statute, § 973.155(1)(a), STATS., which is an issue which we review *de novo*. See *State v. Rohl*, 160 Wis.2d 325, 329, 466 N.W.2d 208, 210 (Ct. App. 1991). Construing the statute's plain language, we are required to determine: (1) whether Perez was "in custody"; and (2) whether that custody was "*in connection with* the course of conduct for which sentence was imposed." See § 973.155(1)(a) (emphasis supplied).

It is undisputed that Perez was "in custody" for the entire seventeen months for which he seeks sentence credit. The critical inquiry is whether all of that time spent in custody was "in connection with" the sentence imposed for the La Crosse County charges.³ We conclude that it was not. During the seventeen months while Perez was awaiting sentence on the La Crosse County charges, the Monroe County Circuit Court imposed sentence on an unrelated conviction. An incarcerated defendant is not entitled to sentence credit for time spent in custody on an unrelated charge. See *State v. Amos*, 153 Wis.2d 257, 280-81, 450 N.W.2d 503, 512 (Ct. App. 1989) (construing § 973.155(1), STATS.). Once the Monroe

³ Perez contends that, because he remained "in custody" the entire seventeen months, his custody was not "severed." Perez's interpretation of severing custody is wrong. Although he remained in custody the entire time, the purpose of that custody, as being "in connection with" the La Crosse County charges, was legally severed by the unrelated sentence imposed by the Monroe County Circuit Court.

County Circuit Court imposed sentence on a conviction unrelated to the charges brought in La Crosse County, the legal cause for Perez's custody was the sentence imposed by the Monroe County Circuit Court, not the pending charges from La Crosse County. *State v. Beets*, 124 Wis.2d 372, 378-79, 369 N.W.2d 382, 384-85 (1985). Consequently, Perez is not entitled to any additional sentence credit.

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

