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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT II**

September 4, 2013

To:

Hon. James G. Poulos  
Circuit Court Judge  
Washington County Courthouse  
P.O. Box 1986  
West Bend, WI 53095

Theresa Russell  
Clerk of Circuit Court  
Washington County Courthouse  
P.O. Box 1986  
West Bend, WI 53095-1986

Mark Bensen  
District Attorney  
Washington County  
P.O. Box 1986  
West Bend, WI 53095-7986

Sara Lynn Larson  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Matthew W. Buss 409248  
Redgranite Corr. Inst.  
P.O. Box 925  
Redgranite, WI 54970-0925

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

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2012AP2659-CR

State of Wisconsin v. Matthew W. Buss (L.C. # 2001CF269)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

Matthew W. Buss appeals pro se from a circuit court order denying his motion for sentence credit. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12).<sup>1</sup> We affirm the order of the circuit court.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

On August 31, 2001, Buss was arrested and taken into custody in the underlying case: Washington County case No. 2001CF269.<sup>2</sup> At the time of his arrest, Buss was on probation in another case: Washington County case No. 2001CF146.<sup>3</sup> The Department of Corrections placed a probation hold on Buss on the day of his arrest.

On September 5, 2001, the circuit court set a \$50,000 cash bond in case No. 2001CF269. On September 19, 2001, Buss's probation in case No. 2001CF146 was revoked. Buss finished serving his revocation sentence on January 13, 2002. However, he remained in custody on case No. 2001CF269, unable to post bail, until he was sentenced on May 2, 2002, to twenty-five years of imprisonment.

On September 28, 2006, Buss's attorney filed a motion for sentence credit in case No. 2001CF269. That motion acknowledged that "Buss was given credit from his arrest date towards his revocation sentence [in case No. 2001CF146], which he finished serving on January 13, 200[2]." However, it argued that Buss should receive credit for the time served between the completion of his revocation sentence and his sentencing in case No. 2001CF269. The State had no objection to the request, and the circuit court granted Buss's motion.

Over six years later, on October 22, 2012, Buss filed a pro se motion seeking additional sentence credit. Specifically, Buss maintained that he was also entitled to credit starting from August 31, 2001 (the day of his arrest and probation hold) until January 13, 2002 (the day he

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<sup>2</sup> In Washington County case No. 2001CF269, Buss was convicted of arson of a building without owner's consent.

<sup>3</sup> In Washington County case No. 2001CF146, Buss was convicted of criminal damage to property.

finished serving his revocation sentence). This time, the State objected, noting that Buss was not entitled to dual credit for that time period. The circuit court agreed with the State and denied the motion. This appeal follows.

On appeal, Buss renews his request for additional sentence credit for the time spent in custody between August 31, 2001, and January 13, 2002. Whether a defendant is entitled to sentence credit is a question of law that this court reviews de novo. *State v. Lange*, 2003 WI App 2, ¶41, 259 Wis. 2d 774, 656 N.W.2d 480.

Here, we are satisfied that the circuit court properly denied Buss's motion for additional sentence credit. As noted, Buss already received credit for the time spent in custody between August 31, 2001, and January 13, 2002. That credit was applied toward his revocation sentence in case No. 2001CF146. Although Buss believes that the credit should also apply to his sentence in case No. 2001CF269, dual credit is not permitted where a defendant has already received credit against a sentence which has been separately served. *See also State v. Jackson*, 2000 WI App 41, ¶19, 233 Wis. 2d 231, 607 N.W.2d 338 (citing *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988)). Thus, because Buss has already received credit for the custody at issue in his previously served revocation sentence, he is not entitled to dual credit for the same custody in this case.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*