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**DISTRICT IV**

September 18, 2013

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

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2012AP1888-CR

State of Wisconsin v. Chad A. Stites (L.C. # 2006CF641)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Chad Stites, pro se, appeals a circuit court order denying Stites' motion for sentence credit. Stites argues that he is entitled to sentence credit for the time he was in custody between his arrest and sentencing in this case. 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 (2011-12).<sup>1</sup> We summarily affirm.

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

In December 2006, Stites was sentenced to two years of initial confinement and two years of extended supervision in this case. The court imposed the sentence consecutive to a sentence of reconfinement following revocation in a related case, imposed at the same sentencing hearing. The court explained that Stites was not entitled to sentence credit in this case because the court awarded Stites the sought-after credit toward the reconfinement sentence, and the sentences were imposed to run consecutively.

In April 2012, Stites moved for sentence credit in this case for the time he was in custody prior to sentencing. The circuit court denied the motion, explaining that the court had applied the sentence credit at issue toward the reconfinement sentence, and the sentences were imposed to run consecutively. Thus, the court explained, Stites was not entitled to the same credit in this case.

It is undisputed that Stites was awarded sentence credit toward his reconfinement sentence for the time he was in custody in relation to both the reconfinement case and this case.<sup>2</sup> When, as here, sentences are imposed consecutively, “custody credits should be applied in a mathematically linear fashion”; that is, “[t]he total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences.” See *State v. Boettcher*, 144 Wis.2d 86, 100, 423 N.W.2d 533 (1988). “The objective with consecutive

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<sup>2</sup> The record in this case is incomplete as to sentence credit. However, the court stated at the sentencing hearing that Stites was “entitled to credit for all time spent in custody as set forth in the Revocation Order and Warrant” on the reconfinement sentence. Additionally, neither Stites nor the State disputes the court’s finding that Stites received the sentence credit he seeks in this case toward the reconfinement sentence.

sentences is to assure that credit is awarded against one, but only one, of the consecutive sentences.” *Id.* at 101 (quoted source omitted). Thus, because the sentence in this case was imposed to run consecutively to the reconfinement sentence, Stites is not entitled to sentence credit in this case for the same time in custody that was credited toward the reconfinement sentence.

Stites, apparently acknowledging that *Boettcher* precludes credit in this case, argues that *Boettcher* should be overruled. Stites contends that *Boettcher* is fundamentally unfair and undermines the rationale underlying the sentence credit statute to prevent indigent defendants from serving more time than non-indigent defendants based on inability to post cash bail. *See State v. Floyd*, 2000 WI 14, ¶¶20-21, 232 Wis. 2d 767, 606 N.W.2d 155. However, as Stites also acknowledges, we are bound by supreme court precedent. *See Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). Accordingly, we are required to follow the mandate of *Boettcher* in this case, which precludes the sentence credit Stites seeks.

Therefore,

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

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