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**DISTRICT II**

October 2, 2013

To:

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

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2012AP2271-CR

State of Wisconsin v. Matthew Sawyer (L.C. # 1984CF381)

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

Matthew Sawyer appeals pro se from an order denying his WIS. STAT. § 973.155 (2011-12)<sup>1</sup> 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. *See* WIS. STAT. RULE 809.21. Because Sawyer's claim had to be brought by petition for writ of certiorari, the circuit court lacked authority to decide the sentence credit motion, and we affirm.

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

In 1985, Sawyer was sentenced to thirty-six years of imprisonment. He was first released from custody in 2001, and his parole was revoked several times, most recently on June 18, 2012. In September 2012, Sawyer filed a motion in the circuit court purportedly seeking 428 additional days of sentence credit for time spent in custody on various parole holds.<sup>2</sup> The circuit court summarily denied Sawyer's motion, reasoning: "The Dept. of Corrections determined your jail credit. The court agrees with the Dept. of Corrections."

To the extent Sawyer's motion seeks additional sentence credit, we affirm the circuit court because under WIS. STAT. § 973.155(2), in the parole-revocation context, the sentence credit determination must be made either by the Department of Corrections (DOC) (if the parole revocation hearing is waived), or the Division of Hearings and Appeals (if the offender's parole is revoked pursuant to a hearing).<sup>3</sup> The sentence credit finding is then "included in the revocation order." *Id.* The circuit court does not participate in this administrative process and does not enter a new judgment of conviction. Where an offender disputes the amount of credit set forth in a revocation order and has exhausted the administrative remedies, he or she must file a petition for writ of certiorari in the circuit court challenging the revocation order itself. *See State ex rel. Cramer v. Wisconsin Ct. App.*, 2000 WI 86, ¶28, 236 Wis. 2d 473, 613 N.W.2d 591.

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<sup>2</sup> The nature of Sawyer's motion is unclear. On closer review, it appears that he is not requesting that additional sentence credit be awarded and reflected on his revocation order, but that the Department of Corrections (DOC) be ordered to apportion, apply, or calculate the credit in a different manner.

<sup>3</sup> The circuit court's order denying Sawyer's sentence credit motion implied that the court had evaluated and agreed with the DOC's sentence credit determination. To the extent the trial court relied on this reasoning, we affirm on alternative grounds. *See State v. Fosnow*, 2001 WI App 2, ¶11, 240 Wis. 2d 699, 624 N.W.2d 883 (on appeal, we may affirm the proper result for different reasons).

We recognize that Sawyer apparently challenges the DOC's method of applying his sentence credit (or computing his sentence) and that he attaches documents reflecting his attempts to resolve the dispute through administrative channels. Sawyer's dispute still concerns a postrevocation sentence credit matter which has been relegated to the DOC. *See* WIS. STAT. § 973.155(2) and (5). As with a challenge to the amount of sentence credit reflected in a revocation order, after exhausting his administrative remedies, Sawyer would need to seek review of the DOC's credit apportionment through a petition for writ of certiorari filed in the circuit court within forty-five days "after the cause of action accrues." *See* WIS. STAT. § 893.735(2).<sup>4</sup> In this case, no petition was ever filed and the trial court was not obligated to construe Sawyer's self-entitled "motion for sentence credit" as a petition for writ of certiorari.

Upon the foregoing reasons,

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

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

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<sup>4</sup> Because Sawyer never filed a petition for writ of certiorari, we take no position on whether the forty-five days began on the date of the revocation order, or some other date, such as the last administrative decision dismissing Sawyer's sentence credit computation complaint.