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DISTRICT II

January 22, 2014

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

2013AP1328-CRNM State of Wisconsin v. Arthur J. Vara (L.C. #1969CF12596)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Arthur J. Vara appeals from a circuit court order denying his motion for sentence credit. Vara's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Vara received a copy of the report, was advised of his right to file a response, and has elected not to do so. After reviewing the record and counsel's report, we conclude that there is no issue with arguable merit for appeal. Therefore, we summarily affirm the order. RULE 809.21.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

In December 1969, Vara was convicted of first-degree murder and sentenced to life imprisonment. The governor commuted his sentence to a fifty-year term in July 1975, and Vara was released from prison on parole in June 1980. His parole was eventually transferred to Texas.

In September 1989, Vara committed a homicide in Texas. He absconded from supervision and was not apprehended until August 1999. He was subsequently convicted of the homicide and a drug charge in Texas and sentenced to prison there. Upon his release from prison in 2011, he was returned to Wisconsin to face parole revocation proceedings.

On October 7, 2011, the Division of Hearings and Appeals ordered the revocation of Vara's parole, ordered the forfeiture of all of his available good time, and granted him credit toward his remaining sentence for confinement he served from August 15, 1999 until March 8, 2000, and from May 10, 2011, until his receipt at the institution.

Vara subsequently filed a motion with the Waukesha County Circuit Court seeking additional credit toward his Wisconsin sentence for his confinement in the Texas prison. The circuit court denied the motion. This no-merit appeal follows.

The only potential issue in this case concerns the issue of sentence credit. Accordingly, the no-merit report addresses whether Vara is entitled to additional sentence credit toward his Wisconsin sentence for his confinement in the Texas prison.

WISCONSIN STAT. § 973.155, which governs sentence credit, provides in relevant part that “[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.” Sec. 973.155(1)(a). Whether a defendant is entitled to sentence credit under this statute 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.

Under existing case law, once Vara was sentenced to prison in Texas, that sentence “severed” the connection between his subsequent confinement and his Wisconsin sentence. *State v. Beets*, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985). In other words, his confinement on the unrelated Texas charges was not “in connection with” the Wisconsin homicide, as those words are used in WIS. STAT. § 973.155(1)(a). See also *State v. Carter*, 2010 WI 77, ¶13 n.7, 327 Wis. 2d 1, 785 N.W.2d 516 (a defendant is not entitled to credit for service of sentence on a separate crime). Even if that were not the case, all of the confinement for which Vara seeks credit has already been credited toward his Texas sentence, and he is not entitled to dual credit.² For these reasons, we agree with counsel that there is no arguable merit to Vara’s claim that he is entitled to additional sentence credit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Steven D. Phillips of further representation in this matter.

² Dual credit will be granted only for sentences which are concurrent. *State v. Rohl*, 160 Wis. 2d 325, 330, 466 N.W.2d 208 (Ct. App. 1991). Here, Vara’s sentences were not concurrent because the Wisconsin sentence had not yet resumed running when the Texas sentence was imposed. See WIS. STAT. § 304.072(4).

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Steven D. Phillips is relieved of further representation of Vara in this matter.

Diane M. Fremgen
Clerk of Court of Appeals