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DISTRICT II

March 12, 2014

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

2013AP2281-CRNM State of Wisconsin v. Leroy Doyle (L.C. #2003CF276)

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

Leroy Doyle appeals from an order denying his motion for sentence credit. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2011-12)¹ and *Anders v. California*, 386 U.S. 738 (1967). Doyle received a copy of the report and was advised of his right to file a response but has not done so. Upon consideration of the no-merit report and our independent review of the record as mandated by *Anders*, we conclude that the order may be summarily affirmed because there is no arguable merit to any issue that could be raised on

appeal. *See* WIS. STAT. RULE 809.21. We affirm the order and relieve Attorney John R. Breffeilh of further representing Doyle in this matter.

As background, in 1990 Doyle received a seventeen-year sentence in a Milwaukee county case. Ten years later he was released on parole. In March and April 2002, he committed the instant offenses in Waukesha county and another crime in Milwaukee county. The Milwaukee county sheriff arrested him in May 2003 and he was held for violating his parole in the first Milwaukee county case.

On June 16, 2003, Waukesha county imposed bail. Doyle's parole was revoked on September 22, 2003 and he was reconfined from October 3, 2003, to September 7, 2004. His detention on bail continued.

On May 10, 2005, Doyle was convicted in this matter of misappropriating personal identifying information and forgery. Sentencing was delayed. On September 14, 2005, he pled guilty in the 2002 Milwaukee county case. Sentenced the same day, the court sentenced him to two years' initial confinement (IC) and three years' extended supervision (ES); he also received 372 days of credit for time served between September 7, 2004 (completion of revocation sentence), and September 14, 2005 (Milwaukee county sentencing).

On October 11, 2005, the Waukesha county court sentenced Doyle to two years' IC and four years' ES for the misappropriation, and four years' IC and four years' ES for the forgery. The sentences were imposed concurrent to each other, but consecutive to any other sentence.

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

Doyle requested sixteen months' sentence credit for the time between his May 17, 2003 arrest and his September 7, 2004 release from revocation. The court denied the credit on grounds that the sentences ordered were consecutive to all others.

Since then, Doyle has filed numerous postconviction motions, both pro se and counseled, seeking sentence credit against the Waukesha county sentence. In the motion underlying this appeal, Doyle argued that he was due credit for the time between June 16, 2003, and September 7, 2004, when he was awaiting or serving his revocation sentence in the first Milwaukee county case and on bail in this case, a period the sentence credit in the second Milwaukee case did not include. The court again denied the motion because the instant sentences were ordered to be served consecutive to any others. This no-merit appeal followed.

The no-merit report identifies the sentence-credit issue as the sole possible appellate issue. Our independent review of the record confirms that such is the case. The report clearly demonstrates, through a timeline and its analysis, that the sentence credit was properly applied to the Milwaukee county sentence and was not available for the later-imposed consecutive Waukesha county sentences.

Where a defendant is arrested for committing a new and separate crime while on probation for an earlier crime and the new crime causes the defendant's probation to be revoked, he or she is not entitled to credit on the new crime's subsequent sentence for time spent in custody awaiting or serving sentence on the earlier crime because that "custody" was not "in connection with the course of conduct" for which the new crime's sentence was imposed. *State v. Beets*, 124 Wis. 2d 372, 374, 369 N.W.2d 382 (1985); WIS. STAT. § 973.155(1). A revocation sentence under § 973.155 is not "in connection with" a new charge—even one that causes the

revocation—because the revocation sentence would be served regardless of the new charge. *Beets*, 124 Wis. 2d at 379. Thus, even if the instant charges had been dismissed, Doyle still would have been in confinement. Moreover, dual credit is not allowable where consecutive sentences are imposed. *State v. Boettcher*, 144 Wis. 2d 86, 89-90, 423 N.W.2d 533 (1988).

We conclude that appointed counsel thoroughly and accurately analyzed the sentence-credit issue. Our independent review of the record reveals no other arguable appellate issues and satisfies us that any further proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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 John R. Breffeilh is relieved of further representing Doyle in this matter.

Diane M. Fremgen
Clerk of Court of Appeals