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**DISTRICT IV**

March 25, 2014

To:

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

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2013AP17-CR

State of Wisconsin v. Sean C. Edge (L.C. #2006CF1145)

Before Lundsten, Higginbotham and Sherman, JJ.

Sean Edge, pro se, appeals an order of the circuit court denying his motion for sentence credit. On appeal, Edge argues that he is entitled to 423 days of sentence credit for time that he was in custody on a probation hold. 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.

Edge was convicted of burglary as a habitual criminal. The court withheld sentence and set a term of six years of probation, to be served concurrently with a four-year total sentence in a prior revocation case which, in turn, was set to run concurrent with sentences from other previous revocation cases. When the court set the term of probation in the burglary case, the court stated that, in the event of revocation of probation, the record would reflect 196 days of sentence credit.

While still serving his probation in the burglary case and his extended supervision in three of the revocation cases, Edge was taken into custody for committing new crimes and had his extended supervision and probation revoked. Edge was reconfined in the revocation cases. In the burglary case, the circuit court sentenced him to two years of initial confinement and two years of extended supervision, to be served consecutively to the reconfinement sentences. Edge received 196 days of sentence credit on the burglary case. Edge then filed a motion seeking 423 days of additional sentence credit in the burglary case for time spent on probation holds between 2007 and the date of his sentencing. The circuit court denied the motion, and Edge now appeals.

Edge argues that probation should be considered a sentence and that his 423 days spent on probation hold should be credited toward his sentence after revocation. Edge concedes in his appellant's brief that he already received credit for those 423 days on his reconfinement sentences in the previous revocation cases. However, he argues that he is also entitled to 423 days of credit in the burglary case because his original probation term in the burglary case was set to run *concurrent* with his sentences in the previous revocation cases.

The problem with Edge's argument is that "probation is *not* a sentence." *State v. Hays*, 173 Wis. 2d 439, 444, 496 N.W.2d 645 (Ct. App. 1992). The record reflects that, when Edge

was actually sentenced in the burglary case, the court imposed the sentence to run *consecutive* to the reconfinement sentences in the previous revocation cases. In situations where multiple sentences are to be served consecutively, courts are to apply credit in a “mathematically linear fashion.” *State v. Boettcher*, 144 Wis. 2d 86, 100, 423 N.W.2d 533 (1988). 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.” *Id.* That is what the circuit court did here. Once the court already had applied Edge’s 423 days of sentence credit to his reconfinement sentences, Edge was not entitled to have the same days of credit applied to his sentence in the burglary case.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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