



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT III**

April 15, 2014

To:

Hon. Timothy M. Doyle  
Circuit Court Judge  
Barron County Justice Center  
1420 State Hwy 25 North #2602  
Barron, WI 54812-3009

Sharon Millermon  
Clerk of Circuit Court  
Barron County Justice Center  
1420 State Hwy 25 North, Room 2201  
Barron, WI 54812-3004

Angela L. Beranek  
District Attorney  
Barron County Justice Ctr #2301  
1420 State Hwy 25 N  
Barron, WI 54812-1583

Christine A. Remington  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Don M. Summers 343684  
Gordon Corr. Cntr  
10401 E. Cty. Rd. G  
Gordon, WI 54838

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

---

2013AP1209-CR                      State v. Don M. Summers (L. C. No. 2009CF223)

Before Hoover, P.J., Mangerson and Stark, JJ.

Don Summers, pro se, appeals an order denying his 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.<sup>1</sup> We reject Summers' arguments and summarily affirm the order.

---

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

In Barron County Circuit Court case No. 2005CF18, Summers was convicted of one count of delivering heroin and one count of delivering cocaine. The court imposed concurrent eight-year sentences consisting of four years' initial confinement and four years' extended supervision. Summers was released to extended supervision on February 29, 2008. In the instant case, arising from Barron County Circuit Court case No. 2009CF223, Summers was convicted of party to the crime of delivering THC. In a May 25, 2010 judgment of conviction, the court withheld sentence and imposed three years' probation, concurrent with "whatever community supervision he is currently on." The court also imposed six months in jail as a probation condition.

On January 6, 2012, Summers' extended supervision and probation were revoked. In case No. 2005CF18, Summers was reconfined for three years and received sentence credit for the periods of August 31, 2009 to September 25, 2009; December 1, 2009 to January 8, 2010; September 10, 2011 to September 14, 2011; and October 26, 2011 to February 2, 2012. In the present case, the court imposed a three-year sentence, consisting of one year of initial confinement and two years' extended supervision, to run consecutively to Summers' sentence in case No. 2005CF18. The court also granted 268 days of sentence credit. Summers' motion for additional sentence credit was denied and this appeal follows.

Whether a defendant is entitled to sentence credit pursuant to WIS. STAT. § 973.155 is a question of law we review independently. *State v. Rohl*, 160 Wis. 2d 325, 329, 466 N.W.2d 208 (Ct. App. 1991). In order to receive sentence credit, an offender must establish: (1) that he or she was in "custody"; and (2) that the custody was in connection with the course of conduct for which the sentence was imposed. *State v. Dentici*, 2002 WI App 77, ¶5, 251 Wis. 2d 436, 643

N.W.2d 180. Here, Summers claims he is entitled to additional credit in this case for the periods from August 31, 2009 to September 25, 2009, and from December 1, 2009 to January 8, 2010.

Awarding the additional credit sought in this case would result in dual credit to Summers in violation of *State v. Boettcher*, 144 Wis. 2d 86, 90, 423 N.W.2d 533 (1988). There, our supreme court held that “no dual credit is allowable where consecutive sentences are imposed.”

*Id.* The *Boettcher* court further held:

[C]ustody credits should be applied in a mathematically linear fashion. The total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences. For ease in calculation and clarity in respect to subsequent exercise of court discretion, the credits should be applied to the sentence that is first imposed.

*Id.* at 100.

Here, Summers received consecutive sentences after the revocation of his extended supervision in case No. 2005CF18 and his probation revocation in the present case. The sentence credit Summers now seeks was already received by him in case No. 2005CF18. Because the sentence credit was already applied to that case, Summers is not entitled to dual credit for the consecutive sentence imposed in the present case.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

---

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