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DISTRICT IV

April 21, 2014

To:

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

2012AP2656-CR

State of Wisconsin v. Chad A. Stites (L.C. # 2003CF424)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Chad Stites appeals an order denying his motion requesting the circuit court to compel the department of corrections to credit him with sentence credit that was granted to him upon revocation of his extended supervision. 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).¹ We affirm.

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

Stites was revoked from extended supervision by the department of corrections. The department issued a revocation order and warrant. That document shows Stites being revoked in three cases, including this one. More specifically, as relevant to this appeal, the revocation order and warrant contains a section titled: "Jail Credit Due." It lists certain dates of custody in two columns and what appear to be corresponding specified cases in a third column. One reasonable reading of this document is that it indicates that Stites is entitled to "jail credit" for certain periods of custody on all of Stites's cases.

In August 2012, Stites filed a "motion granting revocation order and warrant sentence credit." As we understand the motion, Stites asserted that a department of corrections sentence computation made after the revocation did not give him the sentence credit that he believed was ordered in the revocation order and warrant. The circuit court denied the motion.

On appeal, Stites argues that he is entitled to the sentence credit specified in the revocation order and warrant, but that the department of corrections failed to provide that credit. Stites asserts that the revocation order and warrant in this case was issued by the division of hearings and appeals and he argues that the department is bound by that other agency's determination. However, as we stated above, the revocation document was actually issued by the department of corrections. Indeed, the circuit court appeared to discover this factual defect in Stites's argument. The circuit court expressed doubt that a hearing examiner produced the revocation document, and correctly observed that the document was prepared by the "Department of Corrections' designee." Unfortunately, after the circuit court expressed concern about this circumstance, the defense attorney said that it did not matter and the prosecutor indicated no disagreement with the defense attorney. However, this distinction does matter

because one of the statutes Stites relies on contains differing provisions, depending on which agency did the revocation.

Under WIS. STAT. § 973.155(2), if the reconfinement is ordered by the division of hearings and appeals after a hearing, that agency also determines sentence credit applicable on reconfinement. However, if the defendant waives the hearing, the *department* orders the revocation, and then the department also determines reconfinement sentence credit. Here, the revocation order and warrant is on a department form, and it indicates that Stites waived a reconfinement hearing.

In his brief, Stites asserts that the department is failing to follow the sentence credit determined by the division of hearings and appeals, and his legal argument for credit depends on that assertion. However, because Stites is wrong about this factual assertion, we need not decide whether there is merit to his legal argument.

In this case, it was the department itself that issued the revocation order and warrant. Stites has not explained why the department is bound by its own prior sentence credit determination. He cites to a department internal manual, but does not establish that the manual has the force of law. Therefore, we reject Stites's argument that the circuit court was required to enforce the determination in the revocation order and warrant.

Stites also argues that the revocation order and warrant was correct, and that he is entitled to credit on the consecutive sentence in this case. However, Stites has not persuaded us that this situation is outside the scope of case law holding that credit cannot be applied for a second time on a consecutive sentence when it has already been granted on an earlier sentence. *See State v. Boettcher*, 144 Wis. 2d 86, 100, 423 N.W.2d 533 (1988).

IT IS ORDERED that the order appealed is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals