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**DISTRICT IV**

May 22, 2014

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

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2012AP2375-CR

State of Wisconsin v. Jacob M. Baker (L.C. # 2002CF32)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Jacob Baker appeals an order denying his petition for positive adjustment time. 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(1) (2011-12).<sup>1</sup> We affirm.

Baker is serving a sentence with a seventeen-year period of initial confinement that is set to end in January 2019. The court found that Baker is eligible for positive adjustment time, based on 671 days of confinement between 2009 and 2011, at a rate of 1 day for each 5.7 days of

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

that 671-day period. The parties appear to agree that this would be 117 days of positive adjustment time. However, the court denied Baker's petition as premature, because he was not yet close enough to the end of the confinement portion of his sentence.

On appeal, Baker asks that we grant him the 117 days. Baker apparently does not agree that his request is premature. However, the legal basis for that disagreement is not clear. The current statute states that he can petition for this positive adjustment time when he "has served the confinement portion of his ... sentence less positive adjustment time earned between October 1, 2009, and August 3, 2011." WIS. STAT. § 973.198(1). That appears to mean, as the State argues, that Baker can petition for that time on a date that is 117 days before the end of the confinement portion of his sentence, which will come in January 2019. If Baker is arguing that this statute means something else, we are unable to perceive what other meaning he is suggesting.

Baker may also be arguing that he should be allowed to continue earning positive adjustment time through the remainder of his initial confinement, regardless of the statutory changes that ended the program in 2011. However, assuming without deciding that Baker is right on that point, his petition is still premature. Even if he were to earn one day of positive adjustment time for his *entire* seventeen-year initial confinement, that would only be approximately three years, and his petition could still not be filed until early 2016.

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

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