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**DISTRICT IV**

June 13, 2014

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

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2013AP654-CR	State of Wisconsin v. Steven J. Howell (L.C. #2004CF1300;
2013AP655-CR	2005CF674)

Before Lundsten, Sherman and Kloppenburg, JJ.

Steven Howell, pro se, appeals a circuit court order denying Howell's 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 (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.

Howell sought sentence credit for a period of time he was released to extended supervision but subject to electronic monitoring, first at a halfway house and then in his own home. Howell also sought sentence credit for a later period of time he was released to extended supervision but subject to GPS tracking at a halfway house. The circuit court held a hearing, and an agent from the Department of Corrections (DOC) testified that placement at the halfway house and the electronic monitoring and GPS bracelets were imposed as rules of Howell's extended supervision. The circuit court determined that Howell was not entitled to sentence credit for the time he was on extended supervision, relying on *State v. Magnuson*, 2000 WI 19, 233 Wis. 2d 40, 606 N.W.2d 536.

Under WIS. STAT. § 973.155(1)(a), “[a] convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed.” “[F]or sentence credit purposes an offender’s status constitutes custody whenever the offender is subject to an escape charge for leaving that status.” *Magnuson*, 233 Wis. 2d 40, ¶25. WISCONSIN STAT. § 946.42(1)(a)2. provides that “custody” for purposes of an escape charge “does not include the constructive custody of a ... person on extended supervision by the department of corrections or ... [an] extended supervision ... agent.”

Howell argues that the time he was subject to electronic monitoring and GPS tracking on extended supervision was consistent with being placed in a home detention program. *See* WIS. STAT. § 302.425(6) (a person placed in the home detention program is subject to an escape charge for failing to comply with the detention). So far as we can tell, Howell’s argument is that he was in custody when he was subject to electronic monitoring and GPS tracking because the DOC ordered those rules, and the rules were consistent with the restrictions Howell would have had if the DOC had placed him in the home detention program.

The problem with Howell's argument is that he was not placed in the home detention program under WIS. STAT. § 302.425. Rather, Howell was released to extended supervision, and placement in the halfway house, electronic monitoring and GPS tracking were ordered as conditions of that extended supervision. Violating a condition of extended supervision subjected Howell to potential revocation, not to an escape charge. *See* WIS. STAT. § 946.42(1)(a)2. (custody for escape purposes does not include constructive custody by the DOC of a person on extended supervision). Accordingly, Howell is not entitled to sentence credit for complying with his conditions of extended supervision, which included placement in a halfway house and monitoring, because that did not amount to "custody" for sentence credit purposes.

Howell also argues that he was in "custody" as that term was defined in *Magnuson* because he was subject to a felony charge for removing the GPS bracelet. However, *Magnuson* does not stand for the proposition that a defendant is in "custody" for sentence credit purposes if he or she would be subject to a felony charge for leaving that status. Rather, *Magnuson* established a bright-line rule that a defendant is in "custody" for sentence credit purposes only if he or she would be subject to an escape charge under WIS. STAT. § 946.42 for leaving that status. The court explained:

Here we are confronted with a situation in which Magnuson was subject to a charge of felony bail jumping for a violation of the conditions of his bond. He was not in danger of being charged with escape under any applicable statute. Although Magnuson could suffer negative legal consequences for leaving his home detention with electronic monitoring or for violating his other release conditions, we do not believe that these consequences transformed his situation into custody for entitlement to sentence credit.

*Magnuson*, 233 Wis. 2d 40, ¶46. As in *Magnuson*, Howell was subject to negative legal consequences for failing to comply with the terms of his extended supervision. However,

because Howell was not subject to an escape charge for failing to comply with those terms, including the requirements for residence at a halfway house, electronic monitoring and GPS tracking, he is not entitled to sentence credit.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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