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July 9, 2014

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

2013AP185-CR	State of Wisconsin v. Eric D. Pittman (L.C. # 2009CF1629)
2013AP186-CR	State of Wisconsin v. Eric D. Pittman (L.C. # 2010CF385)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

In these consolidated appeals, Eric Pittman appeals pro se from circuit court orders denying his request for sentence credit. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12).¹ We affirm the orders because Pittman did not establish that sentence credit was due.

¹ All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

In September 2011, Pittman was sentenced in the cases now on appeal. At sentencing, Pittman's counsel argued that 546 days of sentence credit were due, but the record does not contain any information supporting counsel's calculation. After the court sentenced Pittman, the parties and the court briefly discussed sentence credit and the number of cases against Pittman, but the parties did not reach any agreement regarding sentence credit. The court noted Pittman would get "credit" against his sentence. The original judgment of conviction in Racine county circuit court case No. 2009CF1629 reflected 308 days of sentence credit apportioned between the two charges to which Pittman pled no contest. The original judgment of conviction in Racine county circuit court case No. 2010CF385 reflected 449 days of sentence credit.

In October and November 2011, the department of corrections wrote to the circuit court to inquire regarding sentence credit in both cases. On each occasion, the circuit court entered corrected judgments of conviction addressing credit. In 2009CF1629, the corrected judgment of conviction granted Pittman 277 days of sentence credit. In 2010CF385, the corrected judgment of conviction granted Pittman zero days of credit.

In July 2012, Pittman moved the circuit court pro se for sentence credit. Pittman noted the subsequent sentence credit reductions at the request of the department of corrections. Pittman argued that given the various dates he was in custody, he was entitled to an additional 275 days of sentence credit.

Because Pittman disagreed with the department of corrections' refusal to grant him additional sentence credit, the circuit court concluded that he had to seek relief via a writ petition in the circuit court. The court also noted that it granted Pittman sentence credit at sentencing² based upon information received from the jail.³

On appeal, Pittman argues that the circuit court should have decided his sentence credit motion rather than requiring him to seek relief via a writ petition. We affirm the circuit court because Pittman's sentence credit motion was not sufficient. Pittman did not provide the court with any proof of the dates he was in custody or any proof demonstrating that his time in custody was connected to the course of conduct for which he was sentenced. WIS. STAT. § 973.155(1)(a); *State v. Beiersdorf*, 208 Wis. 2d 492, 496, 561 N.W.2d 749 (Ct. App. 1997). Credit may not be granted for time spent in custody "that is not related to the matter for which sentence is imposed." *State v. Johnson*, 2009 WI 57, ¶32, 318 Wis. 2d 21, 767 N.W.2d 207. Neither Pittman's motion nor the record before this court permits an answer to these inquiries.

Even though we conclude that Pittman did not make a sufficient showing that he is entitled to sentence credit, we will address the circuit court's stated reason for denying Pittman's sentence credit motion because it evidences a misunderstanding of the WIS. STAT. § 973.155 sentence credit procedure. The circuit court noted that it granted Pittman sentence credit at sentencing and reasoned that Pittman needs to seek review of the department of corrections' calculation of sentence credit via a writ petition to the circuit court.

² The record shows that the credit granted at sentencing was subsequently reduced to 227 days in all cases.

³ This information is not found in the record before this court.

We disagree with the circuit court's view. The history of this case is that the circuit court granted sentence credit at sentencing, but on two subsequent occasions, the department of corrections contacted the circuit court to question the credit awarded at sentencing. On both occasions, the circuit court reduced the sentence credit it had awarded at sentencing.

A petition for a writ of certiorari is the avenue for challenging sentence credit after parole or probation revocation. See *State ex rel. Cramer v. Wisconsin Court of Appeals*, 2000 WI 86, ¶28, 236 Wis. 2d 473, 613 N.W.2d 591; *State ex rel. Thorson v. Schwarz*, 2004 WI 96, ¶¶9, 11, 274 Wis. 2d 1, 681 N.W.2d 914. Here, Pittman challenged sentence credit adjustments made by the circuit court after the original sentencing and not after revocation. Therefore, in circumstances such as those present in this case, the circuit court has authority to address sentence credit when presented with a sufficient motion. Had Pittman's sentence credit motion been sufficient, the circuit court would have had to address the motion on the merits. WIS. STAT. § 973.155(5) ("If the department ... otherwise refuses to award retroactive credit, the person may petition the sentencing court for relief.").

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals