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February 4, 2015

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

2014AP2463-CRNM State of Wisconsin v. Joseph B. Ellefsen (L.C. #2012CF88)

Before Reilly, J.¹

Joseph B. Ellefsen appeals from a circuit court order denying his motion for sentence credit. Ellefsen's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Ellefsen filed a response. After reviewing the record, counsel's report, and Ellefsen's response, we conclude that there are no issues with arguable merit for appeal. Therefore, we summarily affirm the order. WIS. STAT. RULE 809.21.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

On February 26, 2012, Ellefsen was arrested and charged in the present case. At the same time, probation and parole placed a hold on him for violating his terms of release in Walworth County case No. 2005CF134. On September 25, 2012, Ellefsen was sentenced after revocation to time served in case No. 2005CF134.

Thirty-one days later, on October 26, 2012, Ellefsen was sentenced in the present case to eighteen months of initial confinement and six months of extended supervision, imposed and stayed, with two years of probation.² Probation was later revoked.

On March 6, 2014, Ellefsen filed a WIS. STAT. § 973.155 motion for 212 days of sentence credit for the time he spent in jail between February 26, 2012, and September 25, 2012. Although Ellefsen had already received that credit in case No. 2005CF134, he argued that he was entitled to dual credit. The circuit court denied the motion in an April 10, 2014 order.

Ellefsen subsequently filed a notice of intent to pursue postconviction relief. He then filed another motion seeking sentence credit. This time, he requested thirty-one days of credit for the time he spent in jail after completion of his sentence in case No. 2005CF134 but before he was sentenced in the present case. The circuit court granted the motion and ordered an amended judgment of conviction. This no-merit appeal follows.

The no-merit report addresses the following appellate issue: whether Ellefsen is entitled to the additional 212 days of sentence credit that he originally requested.

² The crime that Ellefsen was convicted of in the present case was disorderly conduct, domestic abuse, as a repeater.

Sentence credit is governed by both statute and case law. WISCONSIN STAT. § 973.155(1)(a), provides that “[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.”

When a defendant begins serving a sentence in one case, this event severs the connection between the custody and any other case. *State v. Beets*, 124 Wis. 2d 372, 383, 369 N.W.2d 382 (1985).

When two or more sentences are imposed consecutively, time spent in custody in connection to more than one sentence will nonetheless only be credited to one. *State v. Boettcher*, 144 Wis. 2d 86, 95, 423 N.W.2d 533 (1988). Credit should be given on a day-for-day basis. *Id.* at 100. “The objective with consecutive sentences is to assure that credit is awarded against one, but only one, of the consecutive sentences.” *Id.* at 101 (citation omitted). As a procedural matter, custody in connection with two or more sentences is to be credited to the sentence first imposed. *Id.* at 100.

Here, the 212 days of sentence credit that Ellefsen originally requested involved custody in connection with the present case. However, those days were previously applied to case No. 2005CF134. Thus, awarding the credit would violate the rule that credit be given on a day-for-day basis because case No. 2005CF134 discharged before the sentence in the present case began. See *Boettcher*, 144 Wis. 2d at 100.

In his response, Ellefsen attempts to distinguish *Boettcher* because the sentences in that case were explicitly ordered “consecutive,” whereas in his case the judgment was silent on whether the sentence was consecutive or concurrent to any other sentence. He submits that when

a judgment is silent on the matter, the sentence is presumed concurrent. Thus, he argues that his case was concurrent to case No. 2005CF134 and dual credit was warranted.

This court addressed and rejected a similar argument in *State v. Jackson*, 2000 WI App 41, 233 Wis. 2d 231, 607 N.W.2d 338. There, we observed:

We reject Jackson's attempt to distinguish *Boettcher*. True, the trial court here did not make Jackson's Fond du Lac sentences consecutive to the Dodge county sentences. But the trial court had no need to make that pronouncement because Jackson had already completed the Dodge county sentences at the time of the sentencing in this case. The core idea of *Boettcher* is that "dual credit is not permitted" where a defendant has already received credit against a sentence which has been, or will be, separately served. See [*Boettcher*, 144 Wis. 2d] at 87, 423 N.W.2d 533. Since Jackson had already received credit for the custody at issue in this case in the Dodge county sentences and since he had already served those sentences, he was not entitled to dual credit for the same custody in this case.

Jackson, 233 Wis. 2d 231, ¶19. In light of *Jackson*, we are satisfied that Ellefsen's request for 212 days of sentence credit does not present an issue of arguable merit.

Our independent review of the record does not disclose any potentially meritorious issue for appeal. Because we conclude that there would be no arguable merit to any issue that could be raised on appeal, we accept the no-merit report and relieve Attorney Colleen Marion of further representation in this matter.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that Attorney Colleen Marion is relieved of further representation of Ellefsen in this matter.

*Diane M. Fremgen
Clerk of Court of Appeals*