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**DISTRICT I**

May 11, 2015

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

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2014AP1565-CR                      State of Wisconsin v. Robert Mario Wheeler (L.C. #2013CF3351)

Before Kessler and Brennan, JJ., and Thomas Cane, Reserve Judge.

Robert Mario Wheeler, *pro se*, appeals orders of the circuit court denying him credit against his consecutive sentences in this case for time in custody that has been credited against his service of a sentence imposed in another case. 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 (2013-14).<sup>1</sup> We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

The record is sparse and contains no transcripts. It reflects that Wheeler committed two crimes on July 23, 2013, and police arrested him that same day. He pled guilty to both crimes on September 20, 2013, and the matters proceeded immediately to sentencing. The circuit court imposed four months in jail for one crime and two months in jail for the other, and the judgment of conviction shows the circuit court ordered Wheeler to serve the sentences “consecutively to any sentence.” He received no credit against the sentences for any presentence incarceration.

Wheeler filed a postconviction motion seeking fifty-nine days of presentence credit for the time he spent in custody after his arrest on July 23, 2013, and before his sentencing. The motion showed that, at the time of his arrest, Wheeler was serving a term of extended supervision in an earlier-arising case, No. 2010CF5217. The motion also showed he was facing revocation of his extended supervision in that case based on the conduct underlying his convictions in the instant case. The circuit court denied sentence credit, stating Wheeler would likely receive credit for his time in custody against his reconfinement in case No. 2010CF5217, and explaining that Wheeler was not entitled to dual credit against consecutive sentences pursuant to *State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988). The circuit court went on to say Wheeler could move for reconsideration if he did not receive credit for his time in custody against a term of reconfinement in case No. 2010CF5217.

Some months later, Wheeler renewed his motion, seeking credit against his sentences for the period from the date of his arrest on July 23, 2013, until November 20, 2013, which he identifies as the day he arrived at prison to serve his reconfinement term in case No.

2010CF5217.<sup>2</sup> The circuit court found Wheeler had received credit for the disputed days in custody against his reconfinement term in case No. 2010CF5217. The circuit court reiterated that dual credit against consecutive sentences is not permitted and denied the motion. Wheeler appeals.

“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.” WIS. STAT. § 973.155(1)(a). The time for which an offender is entitled to receive credit includes custody that “is in whole or in part the result of a[n] ... extended supervision ... hold ... placed upon the person for the same course of conduct as that resulting in the new conviction.” SEC. 973.155(1)(b). Whether a defendant is entitled to sentence credit under § 973.155 is a question of law that we review independently of the circuit court. *State v. Lange*, 2003 WI App 2, ¶41, 259 Wis. 2d 774, 656 N.W.2d 480.

On appeal, Wheeler acknowledges he was serving a term of extended supervision imposed in case No. 2010CF5217 when he was arrested in the instant case on July 23, 2013. Wheeler also acknowledges he seeks credit in the instant case for time he spent in custody after July 23, 2013, even though he has received credit for that time against his reconfinement in case No. 2010CF5217. Wheeler asserts dual credit is permitted under the reasoning in *State v.*

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<sup>2</sup> The record does not include any document confirming the date on which Wheeler reached prison to serve his reconfinement term. The precise date of his arrival at prison is not material to our resolution of his appeal. For purposes of this opinion, we accept his assertion that he reached prison on November 20, 2013.

*Antone*, 2009AP860-CR, unpublished slip op. (WI App Sept. 1, 2009).<sup>3</sup> *Antone*, however, involved a sentence credit determination where an offender received concurrent sentences. *See id.*, ¶11. Wheeler received consecutive sentences. *Antone* offers no guidance here.

*Boettcher* is the controlling case for Wheeler’s circumstances. It provides that “[c]redit is to be given on a day-for-day basis, which is not to be duplicatively credited to more than one of the sentences imposed to run consecutively.” *Id.*, 144 Wis. 2d at 87. The *Boettcher* court explained:

the public policy behind the statute impels the conclusion we reach here: That custody credits should be applied in a mathematically linear fashion. The total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences. For ease in calculation and clarity in respect to subsequent exercise of court discretion, the credits should be applied to the sentence that is first imposed.

*Id.* at 100. Moreover, “[t]he 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).

Wheeler contends *Boettcher* is inapplicable because he was not serving a sentence in case No. 2010CF5217 on September 20, 2013, when the circuit court sentenced him in the instant matters. He argues that on September 20, 2013, he was merely on an extended supervision hold in case No. 2010CF5217 and that he resumed serving a sentence in case No. 2010CF5217 only on November 20, 2013, after his extended supervision was revoked and he returned to prison. To demonstrate he was not serving a sentence on September 20, 2013, in case

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<sup>3</sup> The rules of appellate procedure permit Wheeler’s citation to *State v. Antone*, No. 2009AP860-CR, unpublished slip op. (WI App Sept. 1, 2009). The case is an unpublished, authored opinion released after July 1, 2009, and therefore citable pursuant to WIS. STAT. RULE 809.23(3)(b). This court has no duty to discuss or distinguish the case. *See id.* We elect to do so.

No. 2010CF521, he directs our attention to WIS. STAT. § 304.072. It states, in pertinent part: “[t]he sentence of a revoked ... person on extended supervision resumes running on the day he or she is received at a correctional institution subject to sentence credit for the period of custody in a jail ... or any other detention facility pending revocation.” SEC. § 304.072(4). Therefore, he says, on September 20, 2013, he was serving only his sentences in the instant case, and, in his view, he should receive credit against those sentences for time in custody even though he has received credit for that time against his reconfinement in case No. 2010CF521. He is wrong.

Regardless of the status of his sentence in case No. 2010CF5217 on September 20, 2013, Wheeler explicitly concedes that he was serving the extended supervision component of that sentence on July 23, 2013. *Cf.* WIS. STAT. § 973.01(2) (explaining that a bifurcated sentence consists of a term of confinement and a term of extended supervision). Thus, although Wheeler’s sentence in 2010CF5217 may have “resume[d] running” when Wheeler reached a correctional institution, *see* WIS. STAT. § 304.072(4), he received that sentence before the circuit court imposed his sentences in the instant case.<sup>4</sup> *Boettcher* provides that sentence credit for consecutive terms should be applied only once and only “to the sentence that is first imposed.” *Id.*, 144 Wis. 2d at 100. Therefore, any credit for time in custody in connection with both cases should be applied against his reconfinement in case No. 2010CF5217. *See Boettcher*, 144 Wis. 2d at 100.

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<sup>4</sup> The precise date the circuit court sentenced Wheeler in case No. 2010CF5217 is not reflected in the record of this case. We may, however, take judicial notice of electronic circuit court docket entries. *See Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522 (this court may take judicial notice of CCAP entries). The electronic docket in case No. 2010CF5217 shows a sentencing date of December 9, 2011.

Wheeler asserts that *Boettcher* “dates back to 1988, which should make it somewhat obsolete.” To the contrary, *Boettcher* is firmly established. Our supreme court unequivocally demonstrated the ongoing vitality of *Boettcher* just a few years ago, explaining: “[a]s this court held in *Boettcher*, defendants are not entitled to dual credit on a consecutive sentence.” *State v. Lamar*, 2011 WI 50, ¶37, 334 Wis. 2d 536, 799 N.W.2d 758.

Therefore,

IT IS ORDERED that the circuit court’s orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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