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September 2, 2015

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

2014AP1195

State of Wisconsin ex rel. A'Kinbo J.S. Hashim f/k/a John D. Tiggs
v. Wayne J. Wiedenhoef (L.C. # 2013CV424)

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

A'Kinbo J.S. Hashim, f/k/a John Tiggs, appeals an order denying his petition for certiorari review of the sentence credit calculated upon his 2009 probation revocation. 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).¹ We summarily affirm.

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

In 1996, Hashim pled guilty to two counts of armed robbery in Milwaukee County. He was sentenced to 112 months of imprisonment on count one, with credit for sixty-nine days already served. On count two, he was sentenced to a consecutive fifteen years of imprisonment, though that sentence was stayed in favor of a concurrent fifteen-year term of probation. On December 18, 2007, Hashim was released on extended supervision and probation. After Hashim was arrested on sexual assault and battery charges, his probation was revoked. The revocation order determined that the sentence for count one of the armed robbery charge had been discharged. The order also stated that, upon revocation, Hashim's fifteen-year term of imprisonment on count two commenced. The administrative law judge stated that Hashim would be given sentence credit beginning on June 25, 2008, until the date of his "receipt at the institution."

This court has issued two prior opinions on the issue of Hashim's sentence credit. In appeal no. 2010AP2873, Hashim appealed an order denying his request for sentence credit. *See State v. Tiggs*, No. 2010AP2873-CR, unpublished slip op. (WI App May 1, 2012). We affirmed the circuit court's denial of sentence credit for the period from June 2, 2005 through December 18, 2007, the period in which Hashim served six months for a Racine County battery conviction and two years for a Grant County battery conviction, concurrent with his probationary term. *Id.*, ¶¶12-13. However, we reversed and remanded that part of the circuit court order that declined to review the sentence credit granted at the time of his revocation, explaining that we were unable to discern from the record the date of Hashim's "receipt at the institution." *Id.*, ¶15.

On October 19, 2012, the circuit court entered an order on remand, denying Hashim any additional credit. *See State v. Tiggs*, No. 2012AP2618-CR, unpublished slip op. ¶4 (WI App Dec. 17, 2013). The circuit court determined that Hashim had been received at the institution on

March 17, 2009, but that he had already been appropriately credited for that time. *Id.* The court also declined to grant Hashim 112 months of credit for time served on the first armed robbery conviction against the previously stayed fifteen-year sentence for the second armed robbery conviction. *Id.* Hashim appealed, and we affirmed. *Id.*, ¶1.

This proceeding began when Hashim filed a motion for reconsideration or, in the alternative, certiorari review, again challenging his postrevocation sentence credit. The circuit court construed the motion as a petition for writ of certiorari and limited review “to the issue of sentence credit requested by Petitioner [on] June 2, 2013 and determined by the Division of Hearings and Appeals on June 13, 2013.” In its decision letter dated June 13, 2013, the Division of Hearings and Appeals (DHA) denied Hashim’s Petition for Sentence Credit After Revocation dated June 2, 2013. The DHA determined that the credit in question had already been given to Hashim. The DHA issued a second letter on June 28, 2013 denying Hashim’s petition for reconsideration. Hashim petitioned the circuit court for certiorari review. The circuit court concluded that the DHA’s credit calculations were correct. Hashim now appeals.

Hashim frames his appellate arguments in terms of the administrative regulations that govern sentence credit orders. In substance, however, he is disputing the contents of the 2009 order that determined his sentence credit. He believes that he is entitled to 112 months of sentence credit for his incarceration on count one of the robbery conviction, to be applied toward his current sentence on count two of the robbery conviction. He also appears to assert that he is entitled to sixty-nine days of credit, which was previously applied against the first robbery count. Hashim already made these arguments in a prior appeal, and we rejected them at that time, concluding that he was not entitled to dual credit. *See State v. Tiggs*, No. 2012AP2618-CR, unpublished slip op. ¶¶8-9. Therefore, Hashim is barred from relitigating the issue here, and we

affirm the circuit court on that basis. *See State v. Parrish*, 2002 WI App 263, ¶14, 258 Wis. 2d 521, 654 N.W.2d 273 (“Under the doctrine of issue preclusion, a final judgment bars the relitigation of a factual or legal issue that actually was litigated and decided in the earlier action.”).

Hashim also argues that the circuit court failed to follow the proper standard of review on certiorari and considered documents outside of the record that were beyond the scope of its review. However, he provides no examples of what information he believes the court relied upon improperly, and instead makes conclusory assertions. “A party must do more than simply toss a bunch of concepts into the air with the hope that either the [circuit] court or the opposing party will arrange them into viable and fact-supported legal theories.” *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). This court need not consider arguments that either are unsupported by adequate factual and legal citations or are otherwise undeveloped. *See Dieck v. Unified Sch. Dist. of Antigo*, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (unsupported factual assertions); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). While we make some allowances for the failings of parties who, as here, are not represented by counsel, “[w]e cannot serve as both advocate and judge,” *Pettit*, 171 Wis. 2d at 647, and will not scour the record to develop arguments on the appellant’s behalf, *Jackson*, 229 Wis. 2d at 337. Here, Hashim fails to support his argument with pertinent references to the record, and we reject on that basis his argument that the circuit court considered matters outside the scope of its review.

Wiedenhoeft, the respondent, requests that we find the appeal frivolous and award his costs, fees, and reasonable attorney fees pursuant to WIS. STAT. RULE 809.25(3)(a). Although the rules of appellate procedure authorize this court to make such an award to the successful

party as a sanction for a frivolous appeal, a motion seeking costs, fees, and attorney fees must be filed no later than the filing of the respondent's brief. WIS. STAT. RULE 809.25(3)(a). It is not sufficient to request sanctions in a responsive brief. *Howell v. Denomie*, 2005 WI 91, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621. In this case, our records do not reflect that any motion for costs, fees, and attorney fees was filed prior to or contemporaneously with the filing of the respondent's brief and, therefore, Wiedenhoft's request that we find the appeal frivolous and award costs, fees, and reasonable attorney fees is denied.

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

Diane M. Fremgen
Clerk of Court of Appeals