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December 29, 2015

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

2015AP706-CR

State of Wisconsin v. Chanell M. Cousins (L.C. # 2013CF2259)

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

Chanell M. Cousins appeals a judgment of conviction for armed robbery, party to a crime, and a postconviction order. The sole issue in this case concerns the amount of sentence credit due Cousins arising from her presentence custody. 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 affirm.

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

The facts are undisputed. On November 7, 2013, Cousins was charged with armed robbery. Cousins was arrested on November 8, 2013. Cash bail on the armed robbery charge was set at \$2500. Cash bail on a factually distinct burglary charge was set at \$1500. At the preliminary hearing for the armed robbery charge, the circuit court denied the State's motion for bindover. The State immediately refiled the armed robbery case. At a November 21, 2013 initial appearance on the refiled armed robbery case, the State requested cash bail of \$1000. Cousins requested a signature bond, however, arguing that the cash bail already in place in the burglary matter was sufficient. The court commissioner agreed with Cousins, and a signature bond was ordered in the armed robbery case. On March 18, 2014, the State moved to modify bail in the armed robbery case to \$2500 cash. The court granted the State's motion. Cousins remained in custody from November 8, 2013, until sentencing on May 30, 2014.

Cousins pled guilty to both the armed robbery and burglary charges. On the armed robbery charge, the court sentenced Cousins to two years and six months of initial confinement and seven years and six months of extended supervision. On the burglary charge, the court withheld sentence and placed Cousins on probation for five years. Cousins requested sentence credit, in the armed robbery case, from her arrest on November 8, 2013, until sentencing. The State argued that Cousins was entitled to sentence credit only for the periods between arrest and the issuance of a signature bond on November 21, and between March 18, 2014, when cash bail was ordered, and sentencing. The court agreed with the State. Cousins received 101 days sentence credit in the armed robbery case. A postconviction motion again seeking the longer period of sentence credit was denied.

Sentence credit is governed by WIS. STAT. § 973.155(1)(a) which states: “[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.” Interpretation of § 973.155 presents a question of law that we review de novo. *State v. Johnson*, 2009 WI 57, ¶22, 318 Wis. 2d 21, 767 N.W.2d 207. Two questions must be addressed: was the defendant “in custody” and was the custody “in connection with the course of conduct for which sentence was imposed.” *Id.*, ¶27 (quoting § 973.155(1)(a)).

In this case, there is no question that Cousins was “in custody” from November 8, 2013, until May 30, 2014. The question is what part of that custody was “in connection with” this armed robbery case. The parties agree that Cousins should receive credit from arrest until the November 21, 2013 signature bond and from the setting of cash bail on March 18, 2014, until sentencing. The question is whether Cousins is entitled to sentence credit for the period during which a signature bond was in effect.²

Cousins argues that the court commissioner “tied” imposition of the signature bond to the existence of cash bail in the burglary case, thereby ordering “constructive” cash bail in the armed robbery case and making her eligible for sentence credit under WIS. STAT. § 973.155. We are not persuaded. Sentence credit accrues only when there is a “factual connection” between the custody and the course of conduct for which sentence is imposed; “a mere procedural connection will not suffice.” *Johnson*, 318 Wis. 2d 21, ¶33.

A defendant’s perception that custody is related to a particular crime is not enough. *State v. Beiersdorf*, 208 Wis. 2d 492, 498, 561 N.W.2d 749 (Ct. App. 1997). In *Beiersdorf*, a

² As noted, Cousins requested the signature bond. At sentencing, Cousins’ attorney said that he made a strategic decision to seek a signature bond in the hope that Cousins could post bail and return to

(continued)

defendant charged with sexual assault posted a signature bond that remained in effect until sentencing. *Id.* at 494. The defendant was subsequently charged with other crimes and cash bail was set. Because he was unable to post bail, Beiersdorf remained in custody until sentencing on all crimes. *Id.* at 495. This court rejected Beiersdorf’s request that he receive sentence credit in the sexual assault case.

[W]e conclude that because Beiersdorf posted a personal recognizance bond on the felony sexual assault charge and remained on that bond until his sentencing, and because he was in custody on cash bail only on the subsequent bail jumping and sexual intercourse charges, the forty-four days in custody, under [WIS. STAT. §] 973.155(1)(a) was “custody” only “in connection with the” ... bail jumping.

Id. at 498-99 (quoting § 973.155(1)(a)).

In *State v. Johnson*, 2007 WI 107, 304 Wis. 2d 318, 735 N.W.2d 505, a defendant serving a juvenile commitment was charged with felony battery after he battered another juvenile in the same facility. *Id.*, ¶12. The defendant posted a signature bond in the battery case. He was not released from custody, however, and was returned to the juvenile facility. *Id.*, ¶13. The court held that the defendant was not entitled to sentence credit in the battery case because the time at issue was time served on the juvenile commitment. The court reasoned that the signature bond in the battery case remained in effect until sentence was imposed for that charge, and the defendant remained in custody under the juvenile commitment regardless of the battery incident. *Id.*, ¶76. Therefore, the court concluded that the presentence custody in the juvenile facility after

high school, and acknowledged that this decision created the sentence credit issue. On appeal, Cousins expressly disavows a challenge to the effectiveness of her trial attorney.

the battery was not time served “in connection with” the battery sentence and sentence credit was denied. *Id.*, ¶81.

Cousins is similarly situated. The signature bond in the armed robbery case remained in effect from November 21, 2013, until cash bail was ordered on March 18, 2014. Cousins remained in custody throughout, however, because of the cash bail in the burglary case. Therefore, as a factual matter, Cousins’ custody arose from the burglary. It was not “in connection with” the armed robbery. Cousins is not entitled to sentence credit for the period that the signature bond was in effect.³

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

³ Cousins also argues that “considerations of equal protection” require that she receive the additional sentence credit because she was in custody solely because of her indigency. No equal protection argument was raised to the circuit court, and we ordinarily do not consider arguments raised for the first time on appeal. *See Evjen v. Evjen*, 171 Wis. 2d 677, 688, 492 N.W.2d 361 (Ct. App. 1992). Moreover, Cousins has not adequately briefed the issue, and we decline to review it. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).