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**DISTRICT II**

January 13, 2016

To:

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

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2015AP517-CR

State of Wisconsin v. Tahj E. Kitt (L.C. #2012CF645)

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

Tahj E. Kitt appeals from a judgment of conviction and an order denying his motion for postconviction relief. He contends that he is entitled to additional sentence credit in this 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 the judgment and order of the circuit court.

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

Kitt was arrested on June 6, 2012, for selling cocaine and sat in jail until his sentencing on February 26, 2013. During this 265-day period, his probation was revoked, and he served multiple sentences in other cases.<sup>2</sup> Accordingly, the circuit court was tasked with determining how many days were spent in custody in connection with this case for the purpose of calculating sentence credit.

Ultimately, the circuit court awarded Kitt with 123 days of sentence credit in this case. The court arrived at the figure by deducting the days spent in jail serving other sentences from the 265 day total. Kitt agreed with most of the court's analysis; however, he filed a motion seeking an additional thirty days of sentence credit. The court denied Kitt's motion. This appeal follows.

WISCONSIN STAT. § 973.155, which governs sentence credit, provides in relevant part 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.” Sec. 973.155(1)(a). Whether a defendant is entitled to sentence credit under this statute is a question of law that this court reviews de novo. *State v. Lange*, 2003 WI App 2, ¶41, 259 Wis. 2d 774, 656 N.W.2d 480 (2002).

On appeal, Kitt renews his argument that he is entitled to an additional thirty days of sentence credit. He bases this request on the thirty days of conditional jail time that he served on his misdemeanor cases prior to his revocation. Kitt was entitled to credit against his revocation

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<sup>2</sup> Kitt was sentenced after revocation in three misdemeanor cases to 180 days in jail. The circuit court found that he spent 135 days in jail on those sentences (“180 less 45 days of good time”). Kitt also spent seven days in jail on two other cases.

sentences for any conditional time served. *State v. Yanick*, 2007 WI App 30, ¶1, 299 Wis. 2d 456, 728 N.W.2d 365. Therefore, he submits that he actually spent 105 days in jail on those sentences, not the 135 days that the circuit court found, leaving him with thirty more days of credit in this case.

The problem with Kitt's argument is that it is dependent upon facts which are not apparent from this record. It is true that he was entitled to credit against his revocation sentences for any conditional time served. However, it is unclear whether he actually received that credit in those cases. Indeed, neither the judgments of conviction nor the jail records show that Kitt received any credit against his revocation sentences for any conditional time served.

In the end, it is Kitt's burden to establish that he is entitled to additional sentence credit. See *State v. Villalobos*, 196 Wis. 2d 141, 148, 537 N.W.2d 139 (Ct. App. 1995). Without conclusive confirmation<sup>3</sup> that his revocation sentences were in fact reduced by thirty days, we cannot say that he carried his burden to show that he spent those thirty days in custody in connection with this case. Accordingly, we are satisfied that the circuit court properly denied his request for additional credit.

Upon the foregoing reasons,

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

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

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<sup>3</sup> For example, Kitt could obtain amended judgments of conviction showing that he received credit against his revocation sentences for conditional time served.