



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

August 10, 2016

To:

Hon. Karen L. Seifert
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Christian A. Gossett
District Attorney
P.O. Box 2808
Oshkosh, WI 54903-2808

Jacob J. Wittwer
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Joshua R. Techlin, #424871
Fox Lake Corr. Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2015AP2290-CR

State of Wisconsin v. Joshua R. Techlin (L.C. #2014CF25)

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

Joshua R. Techlin, pro se, seeks an order vacating the circuit court's grant of eleven days of sentence credit and a remand to the circuit court with an order that Techlin be given 160 days' sentence credit. Based upon our review of the briefs and the record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14). We summarily affirm as Techlin's sentence in this case is not concurrent to his sentence in Fond du Lac County Case No. 2011CM403 since that sentence was fully completed prior to sentencing in this case. As Techlin's time in custody was allocated to his Fond du Lac sentence, Techlin may not receive

dual sentence credit for the same time served in this case. *See State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988).

Techlin was on probation on December 20, 2013, when he became involved in an incident that led the State to file a criminal complaint on January 16, 2014, charging Techlin with robbery. Techlin was taken into custody on January 21, 2014, as a result of the “body warrant” issued with the criminal complaint as well as an apprehension warrant issued by his probation agent. On January 22, 2014, Techlin had an initial appearance on the robbery charge at which time a signature bond was imposed. Techlin was not released from custody as the probation hold remained in effect. Techlin’s probation was revoked, and he fully completed his Fond du Lac sentence on August 2, 2014.

On July 28, 2014, Techlin’s bond in this case was changed to \$5000 cash, which Techlin posted on July 31, 2014. On September 9, 2014, Techlin pleaded to an amended charge of false imprisonment and sentencing took place on January 15, 2015. At sentencing, Techlin’s counsel requested eleven days of sentence credit. The court sentenced Techlin to four years in prison (two years initial confinement, two years extended supervision) and granted Techlin eleven days’ sentence credit.

Techlin filed a postconviction motion seeking sentence credit of 199 days (January 21, 2014 to August 8, 2014). The circuit court denied Techlin’s motion, finding that despite the court’s indication that the four-year sentence was concurrent to Techlin’s Fond du Lac sentence, it really was not as the Fond du Lac sentence had been completed prior to sentencing in this case. Techlin appeals.

A convicted offender is to be given credit toward his or her sentence for all days spent in custody “in connection with the course of conduct for which the sentence was imposed.” WIS. STAT. § 973.155(a) (2013-14). We review a circuit court’s decision on sentence credit de novo. *State v. Presley*, 2006 WI App 82, ¶4, 292 Wis. 2d 734, 715 N.W.2d 713. Techlin argues that all of his time in custody from January 21, 2014, until he was sentenced in this case should be credited to his sentence. Techlin is wrong as we prohibit dual credit for pretrial custody when credit has already been given for the same time on another sentence. *Boettcher*, 144 Wis. 2d 86 at 87. An exception occurs when an offender commits a new crime while on probation and the court ultimately imposes concurrent sentences on the revocation of probation and the new conviction. *See Presley*, 292 Wis. 2d 734, ¶15.

The confusion in this case was caused by the circuit court mistakenly referring to Techlin’s four-year sentence to run concurrent to his revoked probation sentence.¹ The court, however, could not impose a concurrent sentence as the revoked probation sentence had been fully served when Techlin was sentenced on January 15, 2015. The circuit court properly recognized that the sentence was not concurrent to the revoked probation sentence at Techlin’s postconviction hearing.

In *State v. Jackson*, 2000 WI App 41, ¶¶17-19, 233 Wis. 2d 231, 607 N.W.2d 338, we held that the rationale of *Boettcher* prohibits dual credit when the offender already received

¹ At sentencing, the court mistakenly said the sentence was to be served “consecutive” to any other sentence (which would mean that had Techlin’s probation revocation sentence not been completed, he would not be entitled to dual credit). At the postconviction hearing, the court amended the judgment of conviction to indicate that the sentence would be “concurrent” rather than “consecutive.” The court’s sentence could not legally be consecutive or concurrent as there was no other sentence in effect as of January 15, 2015, when Techlin was sentenced.

credit for the custody time on a completed sentence. Techlin was sentenced after his revocation from probation on June 30, 2014, and Techlin does not argue that he did not receive credit at that sentencing for his time in custody from January 21, 2014, to his sentencing after revocation. Techlin does not dispute that his sentence was completed on August 2, 2014.

Techlin argues that under *State v. Hintz*, 2007 WI App 113, 300 Wis. 2d 583, 731 N.W.2d 646, he should receive dual credit as he was not really “free” on his signature bond in this case as the State and court knew he would be held in custody on the probation hold. *Hintz*, however, does not assist Techlin as the rationale of *Hintz* only applies when the probation revocation sentence and the new sentence run concurrently. *Id.*, ¶¶4, 9-12. As there was no other sentence in effect as of sentencing on January 15, 2015, Techlin’s sentence was neither consecutive nor concurrent with any other sentence.

As Techlin seeks dual credit for time spent in custody and as there was no sentence in effect that could be “concurrent” with the court’s sentence on January 15, 2015, we summarily affirm the circuit court’s denial of Techlin’s motion for additional sentence credit.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21 (2013-14).

Diane M. Fremgen
Clerk of Court of Appeals