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DISTRICT III

February 14, 2017

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

2016AP183-CR State v. Lindsay R. Holstrom
2016AP184-CR (L. C. Nos. 2013CF168, 2013CF169)

Before Stark, P.J., Hruz and Seidl, JJ.

Lindsay Holstrom appeals an order denying her motion for sentence credit. Holstrom argues she is entitled to an additional 258 days of sentence credit in Shawano County Circuit Court case No. 2013CF169.¹ 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

¹ Although Holstrom filed notices of appeal in Shawano County Circuit Court case Nos. 2013CF168 and 2013CF169, she identifies no issue on appeal arising from case No. 2013CF168.

(2015-16).² Although we reject Holstrom’s claim for entitlement to 258 days’ sentence credit, we agree with the State’s concession that Holstrom is entitled to 167 days’ sentence credit. Therefore, we summarily reverse the order and remand the matter to the circuit court to amend the judgment of conviction to award an additional 167 days of credit against the sentence imposed in case No. 2013CF169.

Holstrom committed numerous crimes on several dates in the first half of 2013, including operating five different cars without the owners’ consent and flight from a traffic officer. The State consequently charged Holstrom with multiple offenses in two misdemeanor cases for crimes committed in March 2013 (Shawano County Circuit Court case Nos. 2013CM230 and 2013CM231); one misdemeanor case and one felony case for crimes committed in May 2013 (Shawano County Circuit Court case Nos. 2013CM229 and 2013CF168); and the underlying felony case, No. 2013CF169, for crimes committed in June 2013. In each of the March and May 2013 cases, Holstrom spent short periods of time in pretrial custody and, on June 17, 2013, posted signature bonds.

The underlying felony case, No. 2013CF169, is related to a June 21 crime spree in which Holstrom stole a car, rammed it into an officer’s patrol car, drove it through a yard, and crashed it into a boat. Holstrom was taken into custody that night and, after failing to post a cash bond, remained in custody until her March 6, 2014 sentencing—a total of 258 days. Pursuant to a global plea agreement, Holstrom entered no contest pleas to numerous offenses charged in four

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise stated.

of the five cases and proceeded to sentencing.³ The court imposed consecutive sentences totaling five and one-half years' initial confinement followed by five years' extended supervision. In case Nos. 2013CM229 and 2013CM231, the court imposed consecutive jail sentences of 90 and 33 days, respectively, but declared these 123 days had already been served in pretrial custody.

Holstrom subsequently moved the circuit court for sentence credit.⁴ The circuit court granted 12 days of credit in case No. 2013CF168 for Holstrom's custody in that case from May 12 to May 23, 2013. The court, however, denied Holstrom's request for 258 days of credit in case No. 2013CF169, concluding it would impermissibly overlap with the time-served sentences in the misdemeanor cases, resulting in dual credit contrary to *State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988). This appeal follows.

Whether a defendant is entitled to sentence credit pursuant to WIS. STAT. § 973.155 is a question of law we review independently. *State v. Rohl*, 160 Wis. 2d 325, 329, 466 N.W.2d 208 (Ct. App. 1991). The statute provides 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.” WIS. STAT. § 973.155(1)(a).

Although Holstrom fails to provide sufficient records to support her claim, the State concedes Holstrom served 258 days in pretrial custody related to the charges in case

³ The single offense charged in case No. 2013CM230 was dismissed and read in.

⁴ The State notes Holstrom should have first petitioned the Department of Corrections for credit under WIS. STAT. § 973.155(5) before filing her postconviction motion in the circuit court. *See Clark v. State*, 92 Wis. 2d 617, 644, 286 N.W.2d 344 (1979). For purposes of this appeal only, however, the State does not object to this court's consideration of the issue.

No. 2013CF169. The State nevertheless argues that Holstrom is entitled to only 167 of the 258 days of credit sought. We agree. As noted above, the circuit court ordered time-served sentences totaling 123 days in case Nos. 2013CM229 and 2013CM231. Holstrom, however, spent only 32 days in pretrial custody related to these two cases (24 days for case No. 2013CM229 and 8 days for case No. 2013CM231). As of June 17, 2013, Holstrom was “free” on signature bonds in both of those cases. The circuit court—apparently believing that Holstrom’s post June 21, 2013 custody was related to the misdemeanor charges—used a portion of the 258 days of custody from June 21, 2013, to March 6, 2014, to satisfy the remaining 91 days of the time-served misdemeanor sentences. This was the only period of custody from which those sentences could have been satisfied.

The State acknowledges that Holstrom may contend the circuit court erred by applying credit from her June 2013 to March 2014 custody to the misdemeanors, as her custody during that time was not in connection with the misdemeanors but, rather, connected to case No. 2013CF169. To avoid reopening the misdemeanor cases for resentencing or clarification of the credit awarded, the State agrees to offset the extra credit awarded on the misdemeanors against the consecutive sentence arising from case No. 2013CF169. Under either scenario, Holstrom receives the benefit of those 91 days of credit.

Dual credit is not available in case No. 2013CF169 for that portion of the June 2013 to March 2014 custody used to satisfy the misdemeanor sentences. Where, as here, a court imposes consecutive sentences, “[c]redit is to be given on a day-for-day basis,” and “is not to be duplicatively credited to more than one of the sentences imposed to run consecutively.” *Boettcher*, 144 Wis. 2d at 87. Thus, Holstrom is entitled to 167 days of sentence credit—258 days minus the 91 days used to satisfy the time-served misdemeanor sentences. Holstrom

effectively concedes the State's position by her failure to file a reply brief. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded). We will therefore reverse the circuit court's order and remand the matter with directions to amend the judgment of conviction to award an additional 167 days of credit against the sentence imposed in case No. 2013CF169.

Upon the foregoing,

IT IS ORDERED that the order is summarily reversed and cause remanded with directions. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals