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DISTRICT IV

April 24, 2017

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

2016AP1518-CR

State of Wisconsin v. Reginald L. Curtis (L.C. # 2006CF33)

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

Reginald Curtis, pro se, appeals an order denying his motion for postconviction relief. On appeal, Curtis argues that the circuit court erred in its application of the repeater statute to his sentence, and in denying him sentence credit for time he spent in custody on an extended supervision hold. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2005-06).¹

¹ All references to the Wisconsin Statutes are to the 2005-06 version.

Curtis was convicted, after a plea, of fleeing an officer, obstructing an officer, and misdemeanor bail jumping, all as repeaters. *See* WIS. STAT. §§ 346.04(3), 946.41(1), 946.49(1)(a), 939.62(1)(a) and (b). The circuit court imposed a sentence of five years of initial confinement and two years of extended supervision on count one, fleeing an officer. On the obstruction count, the court imposed one year of initial confinement and one year of extended supervision, to be served concurrently to the sentence on count one. On the bail jumping count, the court imposed one year of initial confinement and one year of extended supervision, consecutive to the other sentences. Curtis filed a postconviction motion to vacate a portion of his sentence and to obtain sentence credit. The circuit court denied the motion, and Curtis now appeals.

Curtis argues on appeal that four years of his sentence on the fleeing charge are attributable to an improperly applied repeater enhancer and, therefore, must be vacated. This argument is without merit. Fleeing an officer is a Class I felony for which the maximum penalty is one year and six months of initial confinement and two years of extended supervision. *See* WIS. STAT. §§ 346.17(3)(a), 939.50(3)(i), and 973.01(2)(b)(9). Under WIS. STAT. § 939.62(1)(b), the circuit court was authorized to extend Curtis's sentence "by not more than [four] years," due to Curtis's status as a repeater with a prior felony conviction. Here, the court imposed a total sentence of seven years, broken down into five years of initial confinement and two years of extended supervision. By applying the repeater enhancer, the court imposed a sentence that exceeded, by three years and six months, what otherwise would have been the maximum imprisonment term for fleeing an officer. We agree with the State's position that the repeater enhancer was properly applied by the circuit court. Curtis fails to persuade us otherwise, and did not file a reply brief disputing the State's position. A proposition asserted by a respondent on

appeal and not disputed by the appellant in the reply brief is taken as admitted. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

We also reject Curtis's argument that he is entitled to sentence credit in this case for time he spent in jail after his arrest on December 29, 2005, until he was sentenced on October 10, 2006. The sentence in this case was imposed consecutively to any other sentence. At the time of his arrest for the charges in this case, Curtis was on extended supervision in another case, Rock County Circuit Court case number 2001CF161. Curtis received 120 days of sentence credit for the time he spent in custody on extended supervision hold awaiting sentencing in case number 2001CF161. The 120 days of credit that were already applied to Curtis's revocation sentence cannot be applied again to the sentence in this case. *See State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988) (credit may not be duplicatively applied to more than one consecutive sentence). Curtis also is not entitled to credit for the time spent in jail after his revocation sentence was imposed but before he was sentenced in this case. That time is attributable only to Curtis's revocation sentence. The sentencing in the revocation case had the effect of severing the connection between Curtis's custody and the pending charges in this case. *See State v. Beets*, 124 Wis. 2d 372, 383, 369 N.W.2d 382 (1985). Accordingly, we conclude that the circuit court properly denied Curtis's request for sentence credit.

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

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals