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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  
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**DISTRICT II**

September 20, 2017

To:

Hon. Mary Kay Wagner  
Circuit Court Judge  
Kenosha County Courthouse  
912 56th St.  
Kenosha, WI 53140

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County Courthouse  
912 56th St.  
Kenosha, WI 53140

Michael D. Graveley  
District Attorney  
Molinaro Bldg.  
912 56th St.  
Kenosha, WI 53140-3747

Jennifer McNamee  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Mark A. Weiss  
Kenosha County Jail  
1000 55th St.  
Kenosha, WI 53140

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

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2016AP1375-CR

State of Wisconsin v. Mark A. Weiss (L.C. #2008CF210)

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

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

The circuit court denied Mark A. Weiss' motion to "re-look" at the court's order denying him 299 days' sentence credit he contends is due him. The court summarily denied this most recent sentence-credit effort—his twenty-first—on the basis that the issue has been decided and

there are no grounds to reconsider it. 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 (2015-16).<sup>1</sup> We affirm the order.<sup>2</sup>

This appeal arises from Weiss' convictions in Kenosha County Case Nos. 2007CF105 and 2008CF210 ("the 2007 case" and "the 2008 case"). Since then, he has filed numerous motions and letters in the circuit court, most of which involved his claim that he is entitled to additional sentence credit under WIS. STAT. § 973.155.<sup>3</sup> None were successful. Nor is this one.

This appeal raises nothing new. His effort to once again relitigate his repeated sentence-credit challenges is to no avail. "A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue." *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Weiss' current sentence-credit claim is barred.

Even were that not the case, his claim fails on the merits. Whether a defendant is entitled to sentence credit under WIS. STAT. § 973.155 is a question of law. *State v. Lange*, 2003 WI App 2, ¶41, 259 Wis. 2d 774, 656 N.W.2d 480.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

<sup>2</sup> After Weiss' appeal was taken under submission, he filed a pro se "Memorandum of Law" and a subsequent "Affidavit Memorandum of Law." Neither changes our analysis or conclusion. The first simply reiterates the sentence-credit arguments presented in his pro se appellate brief; the second, rambling filing is irrelevant to the issue on appeal.

<sup>3</sup> "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).

Weiss was on probation in the 2007 case when, in February 2008, he picked up new charges resulting in a probation hold. He thus was jailed for both the 2007 case probation hold and the arrest in the 2008 case. In December 2008, his probation in the 2007 case was revoked and the court imposed a sentence of time served—299 days—representing the time in custody between the start of his February probation hold and his December revocation and sentencing.

Weiss remained in custody for the 2008 case, however, until his sentencing in February 2009. He received sentence credit for the days between his December 2008 revocation sentencing in the 2007 case and his February 2009 sentencing in the 2008 case.

Weiss contends the 299 days also should be credited against his 2008 case sentence. Citing *State v. Obriecht*, 2015 WI 66, ¶27, 363 Wis. 2d 816, 867 N.W.2d 387, he argues that, as the arrest triggered the hold, the period of concurrent custody for the two cases was “in part due to the conduct resulting in [a] new conviction.” But neither *Obriecht* nor *State v. Hintz*, 2007 WI App 113, ¶11, 300 Wis. 2d 583, 731 N.W.2d 646, the case from which *Obriecht* draws that language, addressed or endorsed dual credit for a period of custody like Weiss’.

Once Weiss was sentenced for the 2007 case following his probation revocation, any connection between his custody and the 2008 case was severed. See *State v. Beets*, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985). Further, a dual-credit claim is barred where the defendant already received the same credit against a prior sentence that he or she already has served. *State v. Jackson*, 2000 WI App 41, ¶20, 233 Wis. 2d 231, 607 N.W.2d 338.

For the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to  
WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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