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**DISTRICT 1**

January 25, 2018

To:

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Timothy James Lewis  
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You are hereby notified that the Court has entered the following order:

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2016AP2401

State of Wisconsin v. Timothy James Lewis  
(L.C. #2012CF005318)

Before Brennan, P.J., Kessler and Dugan, JJ.

**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).**

Timothy James Lewis, *pro se*, appeals from a circuit court order denying his motion for sentence credit. Based on 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 (2015-16).<sup>1</sup> We affirm.

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

### ***Background***

On October 21, 2012, Lewis was arrested for drunk driving. The State later charged him with operating while intoxicated (fifth or sixth offense), operating with a prohibited alcohol concentration (fifth or sixth offense), operating a motor vehicle while revoked, obstructing/resisting an officer, and bail jumping. On December 27, 2012, he was released on bond.

The State and Lewis ultimately entered into a plea deal, which the circuit court accepted on August 19, 2013. At the hearing that took place the following day, the circuit court sentenced Lewis to a total of forty-eight months of imprisonment, consisting of eighteen months of initial confinement followed by thirty months of extended supervision.<sup>2</sup> The circuit court awarded seventy-seven days of sentence credit. It also found Lewis eligible for the Challenge Incarceration Program (CIP).

In June 2014, Lewis successfully completed the CIP. As a result, the time remaining on his initial confinement term was added to his extended supervision term, and he was released to extended supervision.

In 2016, Lewis's extended supervision was revoked, and he was reconfined. Lewis requested a review of his sentence credit. After reviewing the docket and the Milwaukee County Jail booking records, the postconviction court concluded that Lewis was in custody for a total of sixty-nine days: sixty-eight days from October 21, 2012, until his release on bond on December

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<sup>2</sup> The Honorable William W. Brash III sentenced Lewis.

27, 2012, and one day following his remand on August 19, 2013, until his sentencing hearing on August 20, 2013. The circuit court accordingly ordered that the judgment of conviction be amended to reflect a total of sixty-nine days of sentence credit.<sup>3</sup>

Lewis then filed motions asking the circuit court to apply the sixty-nine days of sentence credit to his reconfinement term. The postconviction court concluded that Lewis had already received the credit he requested and that he was not entitled to duplicate credit toward the reconfinement time he was serving. Additionally, the postconviction court held that because Lewis's sentence credit was reduced from seventy-seven days to sixty-nine days, the eight-day difference would be calculated as time left for Lewis to serve.

### *Discussion*

The sole issue on appeal is whether Lewis received sixty-nine days of sentence credit against his term of initial confinement. He did; therefore, he is not entitled to duplicate credit against his reconfinement term.

WISCONSIN STAT. § 973.155(1)(a) provides: "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 the sentence was imposed." Whether a defendant is entitled to sentence credit pursuant to this statute is a question of law we review independently of the circuit court. *See State v. Johnson*, 2007 WI 107, ¶27, 304 Wis. 2d 318, 735 N.W.2d 505.

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<sup>3</sup> The Honorable Mark A. Sanders entered this order.

As the State explains—and Lewis does not refute—when an offender successfully completes CIP, the Wisconsin Department of Corrections (DOC) subtracts the amount of credit owed to a defendant from the actual date of sentencing and then proceeds as if the sentence began on that date.<sup>4</sup> Here, Lewis’s sentence computation reflects that the DOC applied seventy-seven days of credit to Lewis’s initial confinement term. That is, the DOC subtracted seventy-seven days from the date of Lewis’s sentencing (August 20, 2013), and then proceeded as if Lewis’s sentence began on that date: June 3, 2013. By backdating the sentencing date in this fashion, the DOC afforded Lewis the credit he was due.

Lewis’s claim that the sixty-nine days of sentence credit were not deducted from either his term of initial confinement or his reconfinement sentence is belied by the DOC’s computation sheet.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* 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*  
*Acting Clerk of Court of Appeals*

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<sup>4</sup> Lewis did not file a reply brief and therefore has not refuted the State’s argument that he already received the sentence credit he claims he is due. *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).