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DISTRICT III

March 27, 2018

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

2016AP579-CRNM State v. Terry Jackson
2016AP580-CRNM (L. C. Nos. 2002CF495, 2003CF192, 2005CF190)
2016AP581-CRNM

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

Counsel for Terry Jackson has filed a no-merit report concluding no grounds exist to challenge an order denying Jackson's motion for sentence credit. Jackson has filed responses raising several issues, including challenges to the validity of his pleas. However, the issues

Jackson raises are not properly before this court in an appeal from the denial of sentence credit. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we conclude there is no arguable merit to any issue that could be raised on appeal. Therefore, we summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2015-16).¹

Jackson was convicted upon his guilty pleas of numerous crimes arising from Marathon County Circuit Court case Nos. 2001CT287, 2002CF495, 2003CF192, 2004CM662, 2004CM2571, 2004CM2588 and 2005CF190. On June 13, 2005, the circuit court withheld sentence in case Nos. 2002CF495 and 2003CF192 and placed Jackson on concurrent probation terms, resulting in five years of probation with nine months in jail as a condition. In case No. 2005CF190, the court imposed and stayed a five-year sentence consisting of two years' initial confinement and three years' extended supervision, and placed Jackson on three years' concurrent probation with nine months in jail as a condition. With respect to the four remaining cases, which were misdemeanors, the court imposed concurrent sentences resulting in a nine-month jail term, with 140 days of sentence credit.

In March 2006, after Jackson completed his sentences in the misdemeanor cases, his probation was revoked in the felony cases and he began serving the sentence that had been imposed and stayed in case No. 2005CF190. In case Nos. 2002CF495 and 2003CF192, the circuit court imposed one year of initial confinement and three years' extended supervision for each case, concurrent to each other, but consecutive to the five-year sentence in case No. 2005CF190. Jackson subsequently filed numerous pro se motions claiming he was entitled

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

to 140 days of sentence credit in case No. 2005CF190. Those motions were denied, and Jackson did not appeal.

With counsel, Jackson moved again for sentence credit. Because Jackson was no longer serving any part of his sentence in case No. 2005CF190, he argued that, in the interest of justice, the sentence credit to which he claimed he was entitled in that case should be applied to the sentences in case Nos. 2002CF495 and 2003CF192. The circuit court denied the motion after a hearing, concluding that the application of sentence credit to the felony cases would result in dual credit, contrary to *State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988). There, our supreme court held that where there are 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.” *Id.* at 87.

Here, the sentence credit was applied to Jackson’s misdemeanor sentences, and Jackson had served those sentences by the time his probation in the felony cases was revoked. Therefore, when the stay was lifted on the sentence imposed in case No. 2005CF190, that sentence was consecutive by operation of time. Because Jackson is not entitled to dual credit, there is no arguable merit to any claim that the circuit court erred by denying sentence credit for case No. 2005CF190 or the consecutive sentences that followed in case Nos. 2002CF495 and 2003CF192. Moreover, we agree with counsel’s conclusion that the sentence credit issue is now, in effect, moot, as Jackson completed his sentences in all three cases.

Our independent review of the record discloses no other potential issue for appeal. Therefore,

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

IT IS FURTHER ORDERED that attorney Jason R. Farris is relieved of further representing Jackson in these matters. *See* WIS. STAT. RULE 809.32(3).

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

Sheila T. Reiff
Clerk of Court of Appeals