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DISTRICT II

May 9, 2018

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

2016AP2083-CR

State of Wisconsin v. Richard T. Lambert (L.C. # 1998CF742)

Before Neubauer, C.J., Gundrum and Hagedorn, 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).

Richard T. Lambert appeals from an order denying his motion for sentence credit for time spent on electronic monitoring in Illinois while on parole in a Wisconsin case. 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 (2015-16).¹ We affirm the order because Lambert has not established that he is entitled to credit.

Lambert was paroled from a Wisconsin sentence in July 2010. His parole supervision was transferred to Illinois under an interstate compact agreement. Lambert lived in and was supervised by Illinois from July 21, 2010 to February 13, 2014, when he was taken into custody for parole violations. He was then extradited to Wisconsin and his parole was revoked.

Lambert moved for credit against his Wisconsin sentence for time spent on parole supervision in Illinois. The motion was based upon Lambert's contention that he was supervised under Illinois' electronic home detention law, which subjected him to an escape charge under Illinois law. A person subject to an escape charge is "in custody" for purposes of Wisconsin's sentence credit statute, WIS. STAT. § 973.155. *See State v. Magnuson*, 2000 WI 19, ¶25, 233 Wis. 2d 40, 606 N.W.2d 536 ("[A]n offender's status constitutes custody" for sentence credit purposes "whenever the offender is subject to an escape charge for leaving that status.").

The circuit court denied Lambert's motion, and he appealed. During appellate briefing, the State acknowledged that Lambert was placed on electronic monitoring in Illinois. However, it questioned whether Lambert was supervised under Illinois' electronic home detention law, which would subject him to an escape charge under Illinois law.

Because this court cannot make findings of fact, we remanded the matter to the circuit court to address whether Lambert was supervised under Illinois' electronic home detention law.

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

Unfortunately, the court was unable to do so, noting that “there is no evidence that the court can make a determination on.”

In the end, it is Lambert’s burden to establish that he is entitled to sentence credit. *See State v. Villalobos*, 196 Wis. 2d 141, 148, 537 N.W.2d 139 (Ct. App. 1995). Without conclusive confirmation² that he was supervised under Illinois’ electronic home detention law and subject to an escape charge under Illinois law, we cannot say that he carried his burden to show that he was in custody for sentence credit purposes. Accordingly, we are satisfied that the circuit court properly denied his motion.

Upon 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.

Sheila T. Reiff
Clerk of Court of Appeals

² The best Lambert can offer is a written warning he received that failing to notify the Illinois Department of Corrections of damage to his electronic monitoring equipment could result in a charge of attempted escape. We conclude that such a warning, which cites no statutory authority, is insufficient to show that Lambert was in custody for sentence credit purposes.