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DISTRICT IV

December 3, 2018

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

2018AP768-CR

State of Wisconsin v. Russell Henry Farr, III (L.C. # 2016CF1406)

Before Sherman, Blanchard, and Kloppenburg, 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).

Russell Henry Farr, III, pro se, appeals a circuit court order denying Farr's motion for sentence credit. 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(1) (2015-16).¹
We affirm.

In 2016, while Farr was on extended supervision in a prior case, Farr was arrested and taken into custody on charges in this case. Farr's extended supervision was revoked and, on October 10, 2016, Farr was returned to prison to serve out his sentence in the prior case. On October 30, 2017, Farr was convicted and sentenced to a prison term in this case, with that sentence to run concurrent to Farr's previous sentence. Farr sought sentence credit for the time period starting in 2016 when he was first taken into custody on the charges here and ending on October 30, 2017, the date he was sentenced. The circuit court granted sentence credit for the time from July 27, 2016, the date the court found that Farr was arrested on the charges here, to October 10, 2016, the date Farr was returned to prison to serve out his sentence in the prior case.

Farr argues that he is entitled to additional sentence credit, both for a short period of time before July 27, 2016, and for a much longer period of time from October 11, 2016, to October 30, 2017. We reject Farr's argument as to both time periods.

Under WIS. STAT. § 973.155(1)(a), a convicted offender is entitled to sentence credit for custody time "in connection with the course of conduct for which sentence was imposed." Whether Farr is entitled to the additional sentence credit he seeks under this statute is a question of law we review de novo. *See State v. Hintz*, 2007 WI App 113, ¶5, 300 Wis. 2d 583, 731 N.W.2d 646. However, we uphold the circuit court's underlying factual findings unless those findings are clearly erroneous. *Id.*

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

As to the pre-July 27, 2016 period, Farr appears to challenge the circuit court's finding that Farr was not taken into custody on the charges here until July 27, 2016. We reject this challenge because Farr does not show that the court's finding was clearly erroneous.

As to the October 11, 2016, to October 30, 2017 time period, we repeat that this period covered time Farr spent in custody after he was returned to prison in the prior case up to and including the date he was sentenced in this case. Farr argues that this period of custody time was "in connection with" his course of conduct here because (1) his extended supervision in the prior case was revoked based on his criminal conduct in this case, and (2) he was awaiting sentencing on this case.

We agree with the State that Farr's "in connection with" argument fails under *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985). The facts in *Beets* parallel those here, except that *Beets* involved probation revocation instead of supervision revocation. *See id.* at 373-74. The court in *Beets* rejected the same "in connection with" argument that Farr makes. *See id.* at 376-80. The court stated that "any days spent in confinement after the revocation of probation and the imposition of sentence [for Beets' prior drug case] arise out of, and are connected not with [Beets' more recent burglary case], but with the unrelated conduct which resulted in the drug convictions more than a year earlier." *Id.* at 378. The court in *Beets* also stated: "[A]ny connection which might have existed between custody for the drug offenses and the burglary was severed when the custody resulting from the probation hold was converted into a revocation and sentence." *Id.* at 379; *see also State v. Davis*, 2017 WI App 55, ¶10, 377 Wis. 2d 678, 901 N.W.2d 488 (once the offender was "received" in prison after revocation of extended supervision, his custody was "solely 'in connection with'" the revocation case).

Similarly here, Farr’s return to prison after revocation severed any connection between Farr’s custody in the prior case and this case. In the words of the statute, Farr’s custody time from October 11, 2016, to October 30, 2017, was not “in connection with the course of conduct for which sentence was imposed” in this case. *See* WIS. STAT. § 973.155(1)(a).

To the extent that Farr makes other arguments in his appellant’s brief, we deem them undeveloped and decline to address them. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). We also decline to address arguments that Farr raises for the first time in his reply brief. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998).

Therefore,

IT IS ORDERED that the circuit court order denying Farr’s motion for sentence credit is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals