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February 14, 2019

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

2018AP399-CR

State of Wisconsin v. Rodney Anderson (L.C. # 2016CF234)

Before Lundsten, P.J., Sherman 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).

Rodney Anderson appeals an order granting in part and denying in part his motion for additional sentence credit, and an order denying reconsideration. 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 (2017-18).¹ Because Anderson received all of the credit to which he is entitled, we affirm.

Anderson received an imposed and stayed sentence and was placed on probation in connection with Milwaukee County Circuit Court case No. 2014CM4330. On July 25, 2016, while on probation, Anderson was arrested, based on earlier filed charges, in the instant case, Milwaukee County case No. 2016CF234. The new charges triggered revocation proceedings in the 2014 case. Anderson did not post bond in the new case, so he remained in custody on a revocation hold in the 2014 case, and on bond in the new case. On August 22, 2016, Anderson's probation was revoked. Thereafter, on March 7, 2017, he was convicted and sentenced in the instant case.

Anderson filed a motion seeking 232 days of sentence credit in this case, arguing that he was entitled to credit for the entire time he was in custody from his July 2016 arrest to his March 2017 sentencing. The circuit court granted Anderson's motion in part, finding that he was entitled to sentence credit from July 25, 2016, the date he was arrested and placed in custody, until August 22, 2016, when his probation was revoked in the 2014 case.² Anderson moved for reconsideration, which the circuit court denied.

On appeal, Anderson maintains that the circuit court should have awarded credit toward this sentence for all of the time he spent in custody, even after the revocation of his 2014

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

² The circuit court also awarded credit for the period from February 12, 2017, the date Anderson's 2014 probation revocation sentence apparently terminated, through March 7, 2017, the date of sentencing on the new charges in the instant case. Neither party addresses this period of credit on appeal. Because this credit award is irrelevant to our decision, we do not discuss it further.

probation. WISCONSIN STAT. § 973.155(1)(a) entitles a convicted offender to “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.” The “in connection with” element is deemed satisfied when the defendant is in custody for a new offense as well as a probation hold, when the hold is predicated at least in part on the new offense. *See* § 973.155(1)(b); *State v. Beets*, 124 Wis. 2d 372, 379-80, 369 N.W.2d 382 (1985). However, the connection between custodial status and the new offense is severed once the defendant’s probation is revoked and sentence is imposed. *Beets*, 124 Wis. 2d at 378.

This case is on all fours with *Beets*. The connection between Anderson’s custody and the conduct underlying his new charges was severed upon the revocation of his 2014 probation and the imposition of its stayed sentence. *See id.* at 378-79. As in *Beets*, “any days spent in confinement after the revocation of probation and the imposition of sentence arise out of, and are connected not with the [new charges], but with the unrelated conduct which resulted in the” convictions in 2014. *See id.* at 378. This is consistent with the plain language of WIS. STAT. § 973.155(1)(b), which allows for presentence credit toward a new charge only while the defendant is on a probation “hold” triggered by the newly charged conduct. *See* § 973.155(1)(b); *Beets*, 124 Wis. 2d at 381-82. As such, the circuit court correctly awarded credit in the instant case only for time Anderson spent in custody from the date of his arrest through August 22, 2016, when his probation was revoked and sentence was imposed in the 2014 case. This holds true even though the instant sentence was ordered to run concurrent with the probation revocation sentence. *See Beets*, 124 Wis. 2d at 378-79.

Moreover, Anderson did not file a reply brief and therefore has not responded to the State’s analyses that we rely on above. Unrefuted arguments are deemed admitted. *See*

Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp., 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are 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