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DISTRICT I

April 30, 2019

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

2018AP1972-CRNM State of Wisconsin v. Thomas Louis Giegler (L.C. # 2009CF4831)

Before Kessler, P.J., Kloppenburg 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).

Thomas Giegler appeals a circuit court order denying his motion for additional sentence credit. Attorney Nicole Masnica, appointed counsel for Giegler, has filed a no-merit report

seeking to withdraw as appellate counsel pursuant to WIS. STAT. RULE 809.32 (2017-18)¹ and *Anders v. California*, 386 U.S. 738 (1967). Giegler was sent a copy of the report and has filed responses.² Upon consideration of the report, the responses, and an independent review of the record, we conclude there is no arguable merit to any issue that could be raised on appeal.

On July 14, 2009, while on parole, Giegler was arrested on the burglary charges for which he was convicted here. Giegler's parole was revoked, and on November 16, 2009, he was returned to prison to serve his revocation sentence. On November 17, 2010, Giegler was sentenced on the burglary charges here. The circuit court granted Giegler 126 days of sentence credit for the period of time from July 14, 2009, when he was arrested on these charges, to November 16, 2009, when he was returned to prison to serve his revocation sentence.

In 2018, Giegler filed a *pro se* motion seeking additional sentence credit for time spent in custody after November 16, 2009. The circuit court denied the motion. Counsel was appointed for Giegler and filed this no-merit appeal.

The only potential issue for appeal is whether Giegler is entitled to additional sentence credit. We agree with counsel that there is no arguable merit to this issue. The sentence credit statute provides that credit is due for time spent in custody that is "in connection with the course of conduct for which sentence was imposed." WIS. STAT. § 973.155(1)(a). Under *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985), any connection between Giegler's custody and the

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

² Prior to counsel's filing of the no-merit report, Giegler filed two documents addressing sentence credit, and we construed those documents as a response and a supplemental response. Additionally, we provided Giegler with the opportunity to file a further response after he received the no-merit report. Giegler chose not to file a further response.

burglary charges in this case was severed when Giegler's parole was revoked and Giegler was returned to prison to serve his revocation sentence. *See id.* at 379; *see also State v. Davis*, 2017 WI App 55, ¶10, 377 Wis. 2d 678, 901 N.W.2d 488 (when offender was received in prison after revocation of extended supervision, custody was "solely 'in connection with'" the revocation case).

Giegler points out that his sentence here was made concurrent to his revocation sentence. Giegler appears to argue that the concurrent nature of the sentences entitles him to sentence credit for all time spent in custody from his July 14, 2009 arrest on the burglary charges to his November 17, 2010 sentencing on those charges. However, Giegler bases this argument on case law in which a new sentence and a revocation sentence were imposed at the same time. *See State v. Presley*, 2006 WI App 82, ¶2, 292 Wis. 2d 734, 715 N.W.2d 713. Here, Giegler's new sentence was imposed approximately one year after his parole was revoked and he was returned to prison to serve his revocation sentence. Case law involving sentences imposed at the same time does not apply.

Our review of the record discloses no other non-frivolous argument that Giegler is entitled to additional sentence credit.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Nicole Masnica is relieved of any further representation of Giegler in this matter. *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