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DISTRICT IV

August 8, 2019

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

2018AP737-CR

State of Wisconsin v. Wallace B. Baskerville (L.C. # 1997CF306)

Before Fitzpatrick, P.J., 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).

Wallace Baskerville, pro se, appeals a circuit court order that denied Baskerville's request for sentence credit.¹ 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. We summarily reverse and remand with instructions.

On December 16, 1997, Baskerville was charged with mayhem, aggravated battery, bail jumping, battery, possession of marijuana, and possession of drug paraphernalia. According to the criminal complaint, the offenses were committed on December 6, 1997. Following a jury trial, Baskerville was convicted of mayhem, aggravated battery, bail jumping, possession of marijuana, and possession of drug paraphernalia. Baskerville was sentenced to prison on August 24, 1998. There was no discussion of sentence credit at the sentencing hearing, and Baskerville was awarded zero days of sentence credit on the judgments of conviction.

In September 2017, Baskerville moved for sentence credit under WIS. STAT. § 973.155(1)(a). He asserted that he was entitled to sentence credit for jail time he served after his arrest on December 6, 1997, until he was transferred to prison after sentencing on August 28,

¹ Baskerville also asserts in his brief that he is appealing a circuit court order that denied Baskerville's motion challenging the imposition of restitution. However, the order denying Baskerville's challenge to restitution was entered on November 30, 2017. Baskerville's notice of appeal was filed on April 18, 2018. Accordingly, the notice of appeal was not timely as to the order denying Baskerville's restitution challenge, and this court does not have jurisdiction to review that order. *See* WIS. STAT. § 808.04(1) (2017-18) (time to appeal is ninety days from entry of order); WIS. STAT. RULE 809.10(1)(e) (timely notice of appeal necessary to give this court jurisdiction over an appeal). The April 18, 2018 notice of appeal was timely as to the court's April 10, 2018 order denying Baskerville's motion for sentence credit and gives this court jurisdiction to review that order. However, it does not bring before the court the prior final order denying the restitution challenge. *See* RULE 809.10(4).

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

1998. The circuit court denied the motion on multiple grounds, including that the motion was unsigned and unsupported by affidavit or citation to the record.

In October 2017, Baskerville filed a signed motion for sentence credit. Baskerville sought credit for time he spent in jail from December 1997 to August 1998. The court noted that, at sentencing, defense counsel stated that Baskerville had “already been incarcerated as a result of this offense from December of 1997 until” the August 24, 1998 sentencing. The court also noted that sentence credit was not discussed at the sentencing hearing. The court noted that there were references at the sentencing hearing to other pending cases, and that it was unclear whether Baskerville received sentence credit in those other cases. The court ordered Baskerville to submit material supporting his motion for sentence credit and provided the State an opportunity to file a response.

In February 2018, in response to the court’s order, Baskerville submitted a motion arguing that he was entitled to sentence credit for the time he was held in jail after his arrest and until sentencing. He argued that the sentencing court had the duty to determine the sentence credit to which Baskerville was entitled and that it failed to do so. Baskerville attached to his motion jail booking records showing that he was in jail: (1) from December 6, 1997, to December 8, 1997, for aggravated battery, possession of marijuana, and possession of drug paraphernalia, until his release on a signature bond; and (2) from December 12, 1997, to August 28, 1998, for bail jumping, until his transfer to prison.

The State opposed Baskerville’s motion, arguing that Baskerville had not met his burden to establish that he was entitled to sentence credit. The State conceded that jail records confirmed that Baskerville was in custody from December 6, 1997, to December 8, 1997, and

from December 12, 1997, to “August 8, 1997.”² The State asserted that it was “unable to verify” that the custody was in connection with this case. It posited that the sentencing court “may have structured the defendant’s sentence in a way that used up any possible credit,” although it also admitted that it was “speculating based on the lack of record” and that it did “not believe it should search the record to decipher why the defendant believes the days spent in custody as stated above are in connection with” this case. The State did not explain why it believed Baskerville’s custody was not in connection with this case or why it believed that Baskerville may have received the credit in another case. Rather, the State argued for the circuit court to deny Baskerville’s sentence credit motion “based on his lack of specificity and documentation.” The circuit court found that Baskerville had not submitted sufficient evidence to support his assertions, and denied Baskerville’s motion.

A defendant is entitled to presentence credit “for all days spent in custody in connection with the course of conduct for which sentence was imposed.” WIS. STAT. § 973.155(1)(a). A defendant may move for sentence credit at any time after sentencing. Sec. 973.155(5). In a motion for sentence credit, “[t]he law places the burden for demonstrating both custody and its ‘connection with the course of conduct for which sentence was imposed’ on the defendant who seeks such custody.” *State v. Villalobos*, 196 Wis. 2d 141, 148, 537 N.W.2d 139 (Ct. App. 1995) (quoted source omitted). The award of sentence credit is mandatory, as a person may not serve more time than the sentence imposed. *State v. Carter*, 2010 WI 77, ¶51, 327 Wis. 2d 1, 785 N.W.2d 516. The circuit court must make explicit findings related to the award or denial of

² It appears that this is a typographical error, and that the State meant to indicate that Baskerville was in custody until August 28, 1998.

sentence credit. *See* § 973.155(2); *see also Klimas v. State*, 75 Wis. 2d 244, 251-53, 249 N.W.2d 285 (1977). We independently review the application of the sentence credit statute to the facts of a case. *State v. Rohl*, 160 Wis. 2d 325, 329, 466 N.W.2d 208 (Ct. App. 1991).

Here, Baskerville asserted that he was entitled to sentence credit for the time he was in jail from his arrest on December 6, 1997, until he was transferred to prison on August 28, 1998. He submitted jail records showing he was in jail from December 6, 1997, to December 8, 1997, on charges of aggravated battery, possession of marijuana, and possession of drug paraphernalia, and then released on a signature bond. The criminal complaint in this case alleges that Baskerville committed crimes including aggravated battery, possession of marijuana, and possession of drug paraphernalia on December 6, 1997. The transcript of the December 8, 1997 bond hearing establishes that Baskerville was released on a signature bond in this case on that date. Baskerville also submitted jail records showing he was in jail for bail jumping from December 12, 1997, until his transfer to prison on August 28, 1998. The transcript of the December 16, 1997 initial appearance establishes that Baskerville had been arrested for violating his bond as of that date, and that the court therefore converted the signature bond to a cash bond. At sentencing, no party raised the issue of sentence credit, although defense counsel stated that Baskerville had “already been incarcerated as a result of this offense from December of 1997 until” the August 24, 1998 sentencing. Additionally, the court noted that Baskerville was being sentenced for a bail jumping that arose from Baskerville’s criminal conduct in this case that violated a bond from a prior case in a different county. Thus, Baskerville’s submissions, together with the record, were sufficient to meet Baskerville’s burden to show that he was incarcerated in connection with this case from his arrest on December 6, 1997, to December 8, 1997, and from December 12, 1997, to his sentencing on August 24, 1998.

The State's arguments to the contrary are unavailing. The State argues first that Baskerville's motion failed because he did not specify the exact dates he was in custody in connection with this case or the exact number of days of sentence credit he was seeking. It then contends that the jail booking sheets were insufficient to show that the custody was in connection with this case because they did not include case numbers, and points to references at sentencing to other pending cases against Baskerville. The State posits that the custody could have been in connection with Baskerville's other pending cases, and that Baskerville may have received credit in those cases that would preclude credit in this case. It argues that Baskerville was required to explain the connection between those other cases and Baskerville's position that he is entitled to sentence credit in this case. We disagree.

As set forth above, the facts in Baskerville's motion, with the facts in the record, made a sufficient showing that Baskerville was in custody in connection with this case from December 6, 1997, to December 8, 1997, and December 12, 1997, to August 24, 1998. We are not persuaded that a sentence credit motion is insufficient if it does not provide an exact accounting of the number of days of credit to which the defendant believes he or she is entitled. We also are not persuaded by the State's position that Baskerville was required to disprove any reasons that he may not be entitled to sentence credit. Here, as in the circuit court, the State speculates that Baskerville's custody between his arrest on the date of the offenses in this case until sentencing could have been in connection with different cases, or that the sentencing in those other cases could preclude credit here. However, despite being given the opportunity by the circuit court, the State failed to set forth any facts to counter Baskerville's contention that the custody was in connection with this case.

It appears from Baskerville's motion that he is entitled to 257 days of sentence credit. We reverse the circuit court order denying Baskerville's motion for sentence credit and remand for the circuit court to confirm the number of days of sentence credit to which Baskerville is entitled, consistent with this opinion. *See* WIS. STAT. § 973.155(2) and (5).

Therefore,

IT IS ORDERED that the order is summarily reversed and remanded with instructions 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