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DISTRICT I

October 16, 2019

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

2018AP2373-CR

State of Wisconsin v. Keith Lashone Jones (L.C. # 2014CF741)

Before Kessler, Dugan and Fitzpatrick, 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).

Keith Lashone Jones, *pro se*, appeals the orders denying, in part, his request 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 (2017-18).¹ We summarily affirm the orders.

Police arrested Jones for theft on February 23, 2014. At the time of his arrest, Jones was on probation for a drug conviction that carried with it an imposed and stayed thirty-six month term of imprisonment.² The theft violated the conditions of Jones's probation. As a result, the Department of Corrections (DOC) revoked Jones's probation on April 1, 2014 and ordered him to serve the previously imposed sentence. He entered the prison system on April 16, 2014.

In 2016, Jones pled guilty to the underlying theft charge. The circuit court imposed and stayed a seven-year sentence and ordered Jones to serve four years of probation. Two years later, Jones, *pro se*, moved the circuit court for sentence credit in the theft case. The circuit court awarded him thirty-seven days of credit to reflect the time Jones spent in custody from the date of his arrest until the date that he was revoked and ordered to serve his prison sentence in the drug case.

Jones, *pro se*, sought reconsideration. He argued that he was entitled to an additional sixteen days of credit—from April 1, 2014, the date DOC revoked his probation, to April 16,

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

² *See State v. Jones*, Waukesha Cty. Case No. 2012CF582. The judgment of conviction for the drug case is not in the record, but Wisconsin's Consolidated Court Automation Programs (CCAP) records, of which we take judicial notice, confirm this information. *See Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522.

2014, the date he entered the prison system in the drug case.³ The circuit court denied Jones's motion for reconsideration. This appeal follows.

Jones continues to argue that he is entitled to an additional sixteen days of sentence credit. A convicted offender is entitled to credit toward his or her sentence "for all days spent in custody in connection with the course of conduct for which sentence was imposed." WIS. STAT. § 973.155(1)(a). Whether a defendant is entitled to sentence credit is a question of law that this court reviews *de novo*. See *State v. Jackson*, 2000 WI App 41, ¶8, 233 Wis. 2d 231, 607 N.W.2d 338.

To support his position, Jones relies on *State v. Presley*, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713; however, his reliance is misplaced. *Presley* provides that offenders are entitled to credit against the sentence on the new crime for time spent in custody between the date of revocation and *the date on which they are sentenced pursuant to that revocation*. See *id.*, ¶15 (explaining that the defendant was entitled to sentence credit on the new charge from the date of his arrest until the day of sentencing "because while his extended supervision was revoked, his resentencing had not yet occurred" (internal quotation marks omitted)); see also *id.*, ¶11 ("[WISCONSIN] STAT. § 973.155 does not distinguish between the three classes of revocations: parole, probation and extended supervision, and they are lumped together for identical treatment."). When DOC revoked Jones's probation, he was effectively "sentenced" to

³ To the extent Jones made additional arguments in his motion for reconsideration, he abandons them on appeal. See *A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998).

prison based on the imposed and stayed sentence in his drug case. There was no subsequent sentencing hearing as contemplated by *Presley*.

Instead, *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985), controls the outcome. Beets was serving a sentence imposed following a probation revocation on drug offenses that was triggered by a new burglary crime. *Id.* at 374-75. Our supreme court held that Beets was not entitled to have time served under the drug sentence credited to his subsequent sentence for burglary. *See id.* at 379. In so holding, the court approved of our analysis that “any 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.” *See id.*

Here, Jones began serving his sentence on the drug crime following the probation revocation on April 1, 2014. At that point, the connection between Jones’s custody for the drug crime and the theft was severed. Consequently, the circuit court correctly denied Jones’s request for an additional sixteen days of sentence credit in the underlying theft case.

Therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* 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