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**DISTRICT II**

November 6, 2019

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

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2018AP2123-CR                      State of Wisconsin v. Ronald H. Wagner (L.C. #1989CF903A)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

**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).**

Ronald H. Wagner appeals pro se from an order denying his motion seeking a 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).<sup>1</sup> Because the sentence credit under consideration is for a sentence that has been discharged, Wagner's motion and appeal are moot. We affirm.

On July 30, 1991, Wagner was convicted in this Washington County case of several counts of burglary and theft, as party to a crime. On August 1, 1991, he was sentenced to a prison term and probation.

On August 23, 1991, Wagner was sentenced to prison in a separate Waukesha County case. The sentence was made consecutive to the one in this case.

In 1999, Wagner's sentence in this case was vacated and reinstated, and, in 2000, his prison sentence was discharged. He was placed on supervision. In 2010, Wagner completed his total sentence in this Washington County case.

Wagner remains in custody for a different matter: a 2005 conviction for second-degree sexual assault/sex organ injury in St. Croix County. For this conviction, Wagner received twelve years of confinement and ten years of extended supervision.

On June 22, 2018, Wagner filed a motion to correct his sentence in this case. Wagner argued he is entitled to twenty-three days of sentence credit for time he spent in custody between his initial date of sentencing in this case, August 1, 1991, and the date on which he was sentenced in the Waukesha County case, August 23, 1991. The circuit court denied the motion.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version.

Wagner brought a motion for reconsideration on the same issue, which was also denied. Wagner appeals.

A defendant's entitlement to a sentence credit on undisputed facts presents a question of law we review de novo. *State v. Tuescher*, 226 Wis. 2d 465, 468, 595 N.W.2d 443 (Ct. App. 1999).

Wagner contends he is entitled to twenty-three days of credit under WIS. STAT. § 973.04 for time he spent in custody between August 1 and 23, 1999, the respective sentencing dates for this Washington County case and the Waukesha County case. Wagner asserts that, despite bringing this issue to the attention of the circuit court via multiple motions, it has not been addressed. He suggests that his "position is very simple. If the issue had already been addressed, there would be a court record setting forth the exact number of days" he is entitled to under § 973.04, but there is no such record. We reject Wagner's argument as it is moot.

Wagner relies on WIS. STAT. § 973.04, which provides: "When a sentence is vacated and a new sentence is imposed upon the defendant for the same crime, the [Department of Corrections] shall credit the defendant with confinement previously served." WISCONSIN STAT. § 973.155(1)(a) states that the defendant "shall be given 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 two statutes should be read together and, under the right circumstances, can both apply to the same case. See *State v. Lamar*, 2011 WI 50, ¶35, 334 Wis. 2d 536, 799 N.W.2d 758.

Here, the twenty-three-day credit sought by Wagner relates to this 1989 Washington County case. There is no dispute for this Washington County case that, in 1999 Wagner's

sentence was vacated and reinstated, in 2000 his prison sentence was discharged, and in 2010 his supervision ended, thereby completing his total sentence in this case over nine years ago.

In *State v. Obriecht*, 2015 WI 66, ¶¶3, 25, 36, 363 Wis. 2d 816, 867 N.W.2d 387, our supreme court explained that a court can only apply sentence credit to the sentence for the crimes for which the defendant was in custody when the credit accrued. Consequently, if a defendant's sentence has been discharged, then the defendant may no longer obtain a credit for that sentence. *See id.*, ¶¶3, 48.

Wagner's request for sentence credit in this 1989 case is moot. He served his sentence and was discharged long ago, leaving any order by this court regarding sentence credit without any practical effect. An issue is moot when a party seeks a determination that (1) will have no practical effect (2) on an existing legal controversy. *State v. Lagundoye*, 2004 WI 4, ¶10 n.10, 268 Wis. 2d. 77, 674 N.W.2d 526. The order sought by Wagner from this court would have no practical legal effect (subtracting twenty-three prison days from a sentence already extinguished) as Wagner's Washington County sentence is closed—no legal controversy exists.

As the State's brief suggests, to the extent Wagner is really asking that a twenty-three-day credit be applied to the sentence in the unrelated 2005 St. Croix County case, we reject it. As discussed above, the proposed sentence credit must be for time spent "in custody in connection with the course of conduct for which sentence was imposed." WIS. STAT. § 973.155(1)(a); *see Obriecht*, 363 Wis. 2d 816, ¶36. Wagner makes no attempt to explain how a purported sentence credit for his Washington County case could apply to his completely different crime in the 2005 St. Croix County case under the above-noted clear statutory and case law.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to  
WIS. STAT. § 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*