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**DISTRICT IV**

February 27, 2020

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

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2018AP1851-CRNM     State of Wisconsin v. Timothy L. Garland (L.C. # 2008CF15)

Before Fitzpatrick, P.J., Blanchard and Graham, 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).**

Attorney Michael J. Herbert, appointed counsel for Timothy L. Garland, has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2017-18)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). The no-merit report addresses whether there

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

would be arguable merit to a challenge to the circuit court order denying Garland's motion for sentence credit. Garland was sent a copy of the report and has filed a response. No-merit counsel has also filed a supplemental no-merit report. Upon independently reviewing the entire record, as well as the no-merit report, response, and supplemental no-merit report, we agree with counsel's assessment that there are no arguably meritorious appellate issues. Accordingly, we affirm.

In May 2008, Garland was convicted of burglary and sentenced to three years of initial confinement and four years of extended supervision. In September 2017, Garland's extended supervision was revoked and he was ordered to a period of reconfinement.

In November 2017, Garland moved for additional sentence credit. He argued that he was entitled to an additional 421 days of sentence credit, for April 8, 2016, to May 26, 2017, when he was in custody in Illinois serving an Illinois sentence. He argued that the Department of Corrections (DOC) erred by granting him credit only from his arrest on January 6, 2016, to his sentencing for his Illinois convictions on April 8, 2016, and from the date he completed his Illinois sentence on May 26, 2017, until his reconfinement in Wisconsin. He argued that the DOC should have also awarded him credit for the time he was serving his Illinois sentence. He argued that he was in custody in Illinois in connection with his Wisconsin sentence because he was arrested in Illinois on a Wisconsin extended supervision hold and because at the time of his arrest, in addition to a new charge in Illinois, he was facing revocation in both states due to related underlying offenses.

The circuit court held a hearing on the sentence credit motion. At the hearing, the State asserted that Garland was not entitled to any additional sentence credit. It argued that Garland was not entitled to credit in this case for the time he was serving his Illinois sentence. The circuit court

determined that Garland was not entitled to additional sentence credit for the time he was serving his Illinois sentence.

The only potential issue in this case concerns the issue of sentence credit. The no-merit report concludes that there would be no arguable merit to a challenge to the circuit court decision denying Garland's sentence credit motion. It concludes that Garland was not entitled to sentence credit for the time he was serving his Illinois sentence. See *State v. Trepanier*, 2014 WI App 105, ¶18, 357 Wis. 2d 662, 855 N.W.2d 465 (Ct. App. 2014) (“[A] defendant is not entitled to sentence credit for periods of presentence custody during which the defendant was serving an unrelated sentence.”). We agree with counsel's assessment that this issue would lack arguable merit.

Under WIS. STAT. § 973.155(1)(a), “[a] convicted offender 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.” Here, Garland's sentence for a separate crime in Illinois severed any connection between his confinement and the course of conduct in this case. See *State v. Beets*, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985) (any connection which might have existed between custody and offense is severed when the defendant is sentenced for a separate crime). Thus, Garland's confinement while serving his Illinois sentence was not “in connection with” his Wisconsin burglary conviction under § 973.155(1)(a). See also *State v. Carter*, 2010 WI 77, ¶13 n.7, 327 Wis. 2d 1, 785 N.W.2d 516 (defendant not entitled to credit for time serving out-of-state sentence for separate crime).

Garland argues in his no-merit response that his due process rights were violated when he was taken into custody in Illinois on January 6, 2016, but not returned to Wisconsin until after he served his Illinois sentence. He contends that the State's delay in pursuing revocation precluded

any opportunity for him to serve his sentences concurrently. He asserts that he has a due process right to the sentence credit for time he served in Illinois after he was taken into custody on a supervision hold until he was returned to Wisconsin and reconfined in this case.

The supplemental no-merit report concludes that there would be no arguable merit to a claim that Garland's due process rights were violated when Garland was denied sentence credit for the time he was serving his Illinois sentence between April 2016 and May 2017, because Garland's confinement during that time was due to the Illinois sentence and not due to revocation proceedings. *See State ex rel. Alvarez v. Lotter*, 91 Wis. 2d 329, 334-35, 283 N.W.2d 408 (Ct. App. 1979) (due process right to a reasonably prompt revocation hearing is not activated unless defendant's custody is the result of the revocation proceeding).

We agree with counsel that it would be wholly frivolous to argue that Garland is entitled to additional sentence credit based on a due process violation resulting from the delay between Garland's arrest in Illinois and his revocation and reconfinement in this case.<sup>2</sup> Garland received sentence credit for all of the time he was in custody in Illinois and not serving his Illinois sentence. While Garland was serving his Illinois sentence, his confinement did not result from the Wisconsin supervision hold. *See Id.*

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<sup>2</sup> The supplemental no-merit report opines that the due process claim is outside the scope of this no-merit appeal and that the remedy for a due process violation would not be additional sentence credit. Because any claimed due process violation would lack arguable merit, we do not address whether such a claim would be within the scope of this appeal.

Upon our independent review of the record, we have found no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

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

IT IS FURTHER ORDERED that Attorney Michael Herbert is relieved of any further representation of Timothy Garland in this matter. *See* WIS. STAT. RULE 809.32(3).

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*