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August 12, 2020

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

2019AP717-CR

State of Wisconsin v. Gary Lee Stibb (L.C. #1998CF217)

Before Neubauer, C.J., Gundrum and Davis, 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).

Gary Lee Stibb appeals pro se from a circuit court order denying his request for 652 days of 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). We affirm.

Stibb bears the burden on his sentence credit claim. *State v. Carter*, 2010 WI 77, ¶11, 327 Wis. 2d 1, 785 N.W.2d 516. We observe that the record on appeal does not contain a transcript of the November 29, 2018 hearing at which the circuit court denied Stibb’s sentence credit motion. It is the appellant’s responsibility to provide us “with a record that is sufficient to review the issue” the appellant raises. *Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 727 N.W.2d 546. “[I]n the absence of a transcript we presume that every fact essential to sustain the circuit court’s decision is supported by the record.” *Id.*

The record shows the following. Stibb was convicted in 1999 of enticing a child for sexual purposes (the enticement case). When he committed the enticement, Stibb was on parole for two 1990 Fond du Lac County cases. Stibb was taken into custody on a parole hold on February 17, 1998. The April 13, 1998 parole revocation order and warrant states that Stibb had jail credit due from his hold date of February 17, 1998 to “present,” and his reincarceration period for the 1990 convictions exceeded three years. On June 19, 1998, Stibb was received at Dodge Correctional Institution to begin serving his revocation sentences. For purposes of this opinion, we accept Stibb’s contention in the circuit court and this court that his parole revocation sentences were consecutive to each other. On November 30, 1999, the circuit court sentenced Stibb in the enticement case to twenty years in prison consecutive to any other sentence. No sentence credit was awarded on the enticement case.¹

In October 2018, Stibb filed the pro se sentence credit motion that is the subject of this appeal. Arguing that he did not receive sentence credit at the time his revocation sentences

¹ Because the record does not contain a transcript of the November 1999 enticement case sentencing, we cannot know if sentence credit was discussed at sentencing.

began, Stibb sought 652 days of sentence credit in the enticement case for the period from his parole hold date, February 17, 1998, until his November 30, 1999 enticement-case sentencing.² The State objected to the motion because the enticement sentence was imposed as a consecutive sentence, and therefore dual credit was not available. The circuit court's order denying sentence credit states that the motion was denied based on WIS. STAT. § 973.155 (sentence credit) and *State v. Boettcher*, 144 Wis. 2d. 86, 423 N.W.2d 533 (1988) (dual sentence credit not allowed in cases involving consecutive sentences).

Contrary to Stibb's arguments on appeal, sentence credit is not due on the enticement sentence. First, we assume that Stibb received sentence credit against a revocation sentence for the period from February 17 to June 19, 1998, because the record does not show otherwise.³ *Butcher*, 298 Wis. 2d 468, ¶35. Second, because Stibb received sentence credit on a revocation sentence, he may not have dual credit in the enticement case for the same period. *State v. Boettcher*, 144 Wis. 2d at 87. Credit is applied to the first sentence imposed, *id.* at 100, i.e., the revocation sentences.⁴ Finally, Stibb's reception at Dodge Correctional on his revocation

² Stibb's 652-day sentence credit request is premised on his view that sentence credit cannot be applied to the now discharged Fond du Lac revocation sentences. Therefore, all of the credit should be applied to his enticement sentence. Because Stibb has not shown on this record that any sentence credit is due, we do not address this claim further.

³ The April 13, 1998 revocation order and warrant acknowledges "jail credit due" from February 17, 1998 to "present." The record does not substantiate that Stibb did not receive approximately 122 days of credit against a revocation sentence for the period from the February 17, 1998 parole hold to June 19, 1998 when he was received at Dodge Correctional.

⁴ We do not consider the sentence credit calculations Stibb offers in the appendix to his appellant's brief because there is no indication that these calculations were before the circuit court when it denied his sentence credit motion. Matters which were not presented to the circuit court and made part of the record before that court should not be presented to this court. See *State v. Aderhold*, 91 Wis. 2d 306, 314, 284 N.W.2d 108 (Ct. App. 1979).

sentences severed the connection between the revocation cases and the enticement case. *See State v. Davis*, 2017 WI App 55, ¶10, 377 Wis. 2d 678, 901 N.W.2d 488 (the revocation sentences began when Stibb was received at the correctional institution, and the revocation sentences severed the connection between the revocation cases and the enticement case); *see also State v. Beets*, 124 Wis. 2d 372, 379-81, 369 N.W.2d 382 (1985). Therefore, no sentence credit would have been available in the enticement case for the period after reception at Dodge Correctional on the revocation sentences because from that point forward, Stibb's custody status was related to his revocation sentences.

In his reply brief, Stibb concedes that 652 days of credit may not be due. However, he still seeks 122 days of credit for the period from his February 17, 1998 parole hold until June 19, 1998, when he was received at Dodge Correctional to begin serving his revocation sentences. As stated elsewhere in this opinion, the record does not support Stibb's claim that he did not receive sentence credit against a revocation sentence. Furthermore, in the absence of necessary record items, we assume that the record supports the circuit court's decision to deny all sentence credit in the enticement case. *Butcher*, 298 Wis. 2d 468, ¶35.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed 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