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DISTRICT IV

March 25, 2021

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

2019AP2303-CR

State of Wisconsin v. Dean Briggs (L.C. # 2017CF474)

Before Fitzpatrick, P.J., Kloppenburg, and Nashold, 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).

Dean Briggs appeals a judgment of conviction and an order denying his motion for postconviction relief. He argues that he is entitled to 31 additional days of sentence credit. Based

upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).¹ We affirm.

In June 2018, in Columbia County Circuit Court case No. 2010CF293, the circuit court sentenced Briggs to two three-year concurrent prison terms. The court in that case awarded Briggs 1,127 days of sentence credit and indicated that the sentences were for “[t]ime served.”

Subsequently, the circuit court sentenced Briggs in Columbia County Circuit Court case No. 2017CF474.² The court awarded Briggs 17 days of sentence credit. The parties were unable to agree whether Briggs was entitled to an additional 124 days of credit, or whether instead those 124 days of custody time had already been applied in case No. 2010CF293 as part of the 1,127 days of credit awarded in that case.

Briggs filed a motion for postconviction relief in case No. 2017CF474. He argued that he should be credited 31 of those 124 days toward his sentence in case No. 2017CF474. He acknowledged that the 124 days had been “applied to” case No. 2010CF293 as part of the 1,127 days awarded in that case. He argued, however, that the award of 1,127 days of credit in case No. 2010CF293 left an excess of 31 days because his total sentence in that case was only three years, or 1,096 days, including a leap year. Briggs requested that the circuit court amend the judgment in case No. 2017CF474 to apply those 31 days toward his sentence in case No. 2017CF474. The circuit court denied Briggs’s motion.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² In both cases, the circuit court was imposing sentence after revocation of probation.

Briggs's appeal, in case No. 2017CF474, now follows. Briggs renews his argument that he is entitled to an additional 31 days of sentence credit in this case. The State counters that the requested 31 days cannot be awarded in this case because those 31 days were already awarded in case No. 2010CF293. The State argues that awarding those same days again here would constitute dual credit. *See State v. Jackson*, 2000 WI App 41, ¶19, 233 Wis. 2d 231, 607 N.W.2d 338 (“[D]ual credit is not permitted’ where a defendant has already received credit against a sentence which has been, or will be, separately served.”).

We agree with the State. Even assuming that the award of 1,127 days of credit in case No. 2010CF293 included excess credit, all 1,127 days were awarded in that case. Briggs does not contend that the judgment of conviction in case No. 2010CF293 was ever amended to reduce the credit awarded in that case. And, as the State points out, Briggs cites no example of a case in which a court has re-awarded excess credit from one completed sentence to a different sentence. To the extent that there may have been error in awarding all 1,127 days of credit in case No. 2010CF293, Briggs does not persuade us that we can remedy that error in the context of case No. 2017CF474.³

Therefore,

IT IS ORDERED that the circuit court's judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

³ The State makes an additional argument that Briggs has failed to show that the custody time for which he seeks credit was in connection with his course of conduct in case No. 2017CF474. We need not and do not reach this argument.

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

Sheila T. Reiff
Clerk of Court of Appeals