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**DISTRICT I**

May 4, 2021

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

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2020AP1065-CR      State of Wisconsin v. Danyall Lorenzo Simpson  
(L.C. #2011CF4817)

Before Brash, P.J., Donald and White, 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).**

Danyall Lorenzo Simpson, *pro se*, appeals an order denying his motion for sentence modification and an order denying his motion for 269 days of sentence credit. Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary

disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> We do not address Simpson's claim for sentence modification because Simpson has abandoned it. As to his claim for sentence credit, Simpson received three consecutive sentences in this case, and he received credit for the 269 days at issue against one of those sentences. He is therefore not entitled to receive credit for those same days against any of the other sentences. Accordingly, we summarily affirm.

In 2012, a jury found Simpson guilty of three crimes: the misdemeanor offense of endangering safety by use of a dangerous weapon as an act of domestic abuse; the felony offense of aggravated battery by use of a dangerous weapon as an act of domestic abuse, and the felony offense of failing to comply with an officer's attempt to take a person into custody.<sup>2</sup> The circuit court imposed three consecutive sentences. It also awarded Simpson the 269 days of credit he requested for the time he spent in presentence custody, and the circuit court directed that Simpson receive the credit toward his felony sentence for aggravated battery.

While represented by counsel, Simpson pursued a direct appeal of his criminal convictions, a petition to this court for a writ of habeas corpus, a motion for postconviction relief pursuant to WIS. STAT. § 974.06, and an appeal of the order denying that motion. His challenges were unsuccessful.

In May 2020, Simpson filed a motion *pro se* seeking modification of his sentences based on the alleged new factor of his statutory disqualification from participation in a prison treatment

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

<sup>2</sup> The jury found that Simpson used a dangerous weapon to commit the crime of failing to comply with an officer's attempt to take him into custody. The circuit court dismissed the dangerous weapon enhancer prior to sentencing.

program. The circuit court denied the motion. Simpson filed a motion to reconsider that also included a new claim, namely, that he was entitled to receive credit toward his misdemeanor sentence for the same 269 days of presentence custody that the circuit court had awarded against his aggravated battery sentence. The circuit court denied relief, and he appeals.

As a preliminary matter, we observe that in this court, Simpson pursues only his claim for additional sentence credit. We therefore deem his sentence modification claim abandoned, and we do not address it any further.<sup>3</sup> See *State v. Schiller*, 2003 WI App 195, ¶6, 266 Wis. 2d 992, 669 N.W.2d 747.

We turn to Simpson’s claim for sentence credit. Pursuant to WIS. STAT. § 973.155, a convicted person is entitled to “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.” See *id.* When determining credit, courts must apply § 973.155 in light of the long-settled rule that where sentences are consecutive, “dual credit is not permitted.” See *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988). Rather “[t]he total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences.... ‘The objective with consecutive sentences is to assure that credit is awarded against one, but only one, of the consecutive sentences.’” *Id.* at 100-01 (citation omitted). Because Simpson received credit

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<sup>3</sup> After the State pointed out in its respondent’s brief that Simpson had abandoned his sentence modification claim, Simpson replied that “if this court orders the circuit court to award[] Simpson the 269 days [of credit,] that will be a modification of his sentence.” Regardless of how Simpson understands the nature of the claim that he pursues on appeal, the issue that he has placed before us is whether the circuit court erroneously denied him 269 days of credit against his misdemeanor sentence. Accordingly, that is the issue we address. See *bin-Rilla v. Israel*, 113 Wis. 2d 514, 521, 335 N.W.2d 384 (1983) (requiring courts to look beyond the label that *pro se* prisoners use for their pleadings and, if necessary, to relabel them and proceed from there).

against one of his consecutive sentences for 269 days that he spent in presentence custody, he is not entitled to receive credit for those same days against another of his consecutive sentences. *See id.*

Simpson asserts that, notwithstanding *Boettcher*, he is entitled to 269 days of credit against his misdemeanor sentence pursuant to WIS. STAT. § 973.14(3).<sup>4</sup> That statute provides:

A prisoner sentenced to a county jail or the house of correction being held in a county jail awaiting trial on another charge shall be deemed to be serving the county jail or house of correction sentence and shall be given credit on the sentence as provided in s. 302.43 or 303.19.

Sec. 973.14(3). According to Simpson, this statute entitles a defendant to an award of presentence credit against any sentence to a county jail or house of correction—that is, a misdemeanor sentence, *see* WIS. STAT. § 939.60—and to receive that award without regard to any credit that a defendant received toward a prison sentence for that same custody. Simpson misunderstands the statute and misapplies it to his situation.

When we construe a statute, we do not look beyond its text to determine the statute’s meaning if the statutory language is clear on its face. *See State v. Peters*, 2003 WI 88, ¶14, 263 Wis. 2d 475, 665 N.W.2d 171. “Statutory language is given its common, ordinary and accepted meaning.” *Id.*

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<sup>4</sup> Simpson asserts in his reply brief that the time he spent in presentence custody from his arrest on October 2, 2011, until his sentencing on June 28, 2012, constituted 271 days, not 269 days. To the extent that Simpson alleges in his reply brief that he is entitled to a total of 271 days of credit against his consecutive sentences, he did not make that claim in the circuit court motions underlying this appeal. We normally do not consider matters raised for the first time on appeal, *see State v. Van Camp*, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997), or matters raised for the first time in a reply brief, *see State v. Chu*, 2002 WI App 98, ¶42 n.5, 253 Wis. 2d 666, 643 N.W.2d 878. We will not depart from those rules here.

WISCONSIN STAT. § 973.14(3), by its plain and ordinary terms, applies to inmates who are held in county jail awaiting trial on one charge after being sentenced either to jail or to the house of correction in regard to another charge. *See id.* The statute therefore does not apply to Simpson here. The record is clear that at the time that he was in custody “awaiting trial” in this case, he had not been “sentenced to a county jail or the house of correction.” *See id.* He was held before trial solely in connection with the pending charges in this matter.

Moreover, in circumstances where WIS. STAT. § 973.14(3) does apply, it expressly directs that inmates receive credit as provided in WIS. STAT. § 302.43 and WIS. STAT. § 303.19. The first of these provisions, § 302.43, requires credit “for time served prior to sentencing under WIS. STAT. § 973.155.” *See* § 302.43. *Boettcher*, however, governs the award of credit under § 973.155, and therefore dual credit for consecutive sentences is prohibited. *See Boettcher*, 144 Wis. 2d at 87. Section 302.43 and § 303.19 additionally govern how inmates serving time in a county jail and the house of correction, respectively, may earn credit for good behavior. *See* §§ 302.43, 303.19(3). Provisions governing the determination of credit for good behavior are unrelated to Simpson’s claim for presentence credit. Indeed, Simpson states that he received good time credit against his misdemeanor sentence in this case.

In sum, *Boettcher* bars Simpson from receiving credit toward his misdemeanor sentence for the same 269 days of presentence custody that were previously credited toward his consecutive felony sentence. Nothing that Simpson cites, including WIS. STAT. § 973.14(3), lifts that bar. Therefore, we affirm.

IT IS ORDERED that the postconviction orders are summarily affirmed. *See* WIS. STAT. RULE 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*