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May 4, 2021

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

2019AP1103-CR State of Wisconsin v. Thomas Louis Giegler (L.C. # 2009CF4831)

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).

Thomas Louis Giegler, *pro se*, appeals a circuit court order that denied him credit for presentence custody in this matter for the period from July 14, 2009, to November 16, 2009. Based upon a review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. Because the circuit court previously awarded Giegler credit for presentence custody in this matter for the period from the date of his arrest on July 14,

2009, to November 16, 2009, and because this court previously determined that Giegler is not entitled to any additional sentence credit, we summarily affirm.

On July 14, 2009, police arrested Giegler in connection with a series of burglaries committed over the course of the previous few days.¹ At the time of his arrest, Giegler was on parole in connection with two burglary cases that arose in 1998. Following the new burglary allegations, Giegler's parole was revoked, and he returned to prison. He subsequently pled guilty to two burglaries in the instant case, and the circuit court sentenced him on November 17, 2010. The circuit court imposed two evenly bifurcated eight-year terms of imprisonment and ordered Giegler to serve the sentences concurrently with each other and with the revocation terms that he was serving for the 1998 charges. The circuit court also awarded Giegler a total of 126 days of sentence credit: 107 days for the period from July 14, 2009, until October 28, 2009, when his parole was revoked; and an additional 19 days for the period from October 29, 2009, through November 16, 2009, when he returned to prison to serve his revocation terms.²

Giegler was released to extended supervision in 2012, but in 2018 his extended supervision was revoked. In April 2018, he moved the circuit court for an additional 329 days of

¹ Giegler stated in his postconviction motion and in his appellant's brief that he was arrested on July 13, 2009, and he suggests throughout his appellant's brief that he seeks credit beginning with an alleged arrest date of July 13, 2009. The record clearly shows, however, that he was arrested on July 14, 2009. A police officer testified at the preliminary examination after refreshing his recollection with his arrest report that he arrested Giegler on July 14, 2009. The attorneys who represented Giegler at trial and in previous postconviction litigation stated in various filings that he was arrested on July 14, 2009. Giegler himself filed a document in November 2010 that began with his assertion that "[o]n July 14, 2009, [he] was taken into custody." As did the circuit court, we treat Giegler's claim as seeking credit for time in custody commencing on July 14, 2009.

² The circuit court awarded Giegler 104 days of credit at his November 2010 sentencing. In a postconviction order entered approximately a month later, the circuit court awarded Giegler twenty-two additional days of credit.

sentence credit in this case for his time in custody from November 16, 2009, until his “sentencing date ... and beyond.” The circuit court denied the motion, and Giegler pursued an appeal with the assistance of appointed counsel under the no-merit procedures set forth in WIS. STAT. RULE 809.32. We concluded that Giegler was not entitled to any additional sentence credit for his time in custody after November 16, 2009, and we summarily affirmed. *See State v. Giegler (Giegler I)*, No. 2018AP1972-CRNM, unpublished op. and order (WI App Apr. 30, 2019).

Soon after we resolved *Giegler I*, Giegler filed a *pro se* motion seeking sentence credit for the period from July 14, 2009, through November 16, 2009. The circuit court denied the motion, explaining that Giegler had already received credit for that period. The circuit court added that, to the extent Giegler believes that the Department of Corrections (DOC) is holding him past his release date, he must pursue alternative remedies. He appeals.

Giegler does not include a statement of issues in his appellant’s brief. As did the State, we construe his submission as seeking sentence credit against his reconfinement term for two discreet periods: (1) from July 14, 2009, when he was arrested in this case, through November 16, 2009, when he arrived at prison following revocation of his parole in the 1998 matters; and (2) from November 16, 2009, through November 17, 2010, the date that he was sentenced in this case. We examine each period in turn.

A person sentenced to confinement is entitled to credit for time in presentence custody that is in connection with the course of conduct for which the sentence is imposed. *See WIS.*

STAT. § 973.155(1)(a) (2019-20).³ Credit for presentence custody should be awarded on a day-for-day basis against the sentence imposed. See *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988). These principles do not entitle Giegler to additional credit against his sentences in this case for the 126-day period that he spent in custody from July 14, 2009, through November 16, 2009, because he already received credit against his sentences in this case for that period.

Giegler implies that he is entitled to additional credit as a result of the reincarceration he is serving following the 2018 revocation of his extended supervision in this case. He is wrong. Reincarceration following revocation of supervision is a continuation of the sentence originally imposed by the circuit court. See *State v. Obriecht*, 2015 WI 66, ¶35, 363 Wis. 2d 816, 867 N.W.2d 387. Therefore, as *Obriecht* explains, “if [the offender] ha[s] not received all the sentence credit that was available to apply to the felony sentence when that sentence was imposed, [the offender] could have received it when his [extended supervision] was revoked.” See *id.* Giegler, however, *did* previously receive credit against his sentences in this case for the 126 days from July 14, 2009, through November 16, 2009. The circuit court ordered the bulk of the credit at his original sentencing on November 17, 2010, and the remainder in a postconviction order entered soon thereafter. Giegler may not receive credit twice for the same days in custody against the same sentence. See *State v. Rohl*, 160 Wis. 2d 325, 329-30, 466 N.W.2d 208 (Ct. App. 1991) (stating that credit is awarded on a day-for-day basis regardless of whether the offender seeks credit against consecutive sentences or one sentence). As the supreme court has cautioned, courts determining sentence credit must “ensure that a person

³ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

actually serves the requisite number of days to which [the person] was sentenced.” See *State v. Johnson*, 2009 WI 57, ¶70, 318 Wis. 2d 21, 767 N.W.2d 207.

We turn to Giegler’s claim that he is entitled to presentence credit in this case for time he spent in custody after November 16, 2009. That claim is barred because Giegler previously litigated it. He raised the claim in his April 2018 postconviction motion, the circuit court denied the motion, and Giegler pursued an appeal with the assistance of counsel. See *Giegler I*, No. 2018AP1972-CRNM at 2. Giegler’s counsel filed a no-merit report that we considered along with the record and Giegler’s responses. See *id.* at 2 & n.2. In our decision, we observed that the circuit court previously granted Giegler 126 days of credit for the period from July 14, 2009, through November 16, 2009, and we determined that “[t]he only potential issue for appeal is whether Giegler is entitled to additional sentence credit.” *Id.* at 2. We concluded that “there is no arguable merit to this issue.” *Id.*

“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). This rule is no less applicable because the matter was resolved in a no-merit appeal. “[T]he no[-]merit process ‘necessarily implicates the merits of an appeal’” and “‘can only be understood as a merits-based decision with respect to each of the claims raised in the petition.’” *State v. Tillman*, 2005 WI App 71, ¶18, 281 Wis. 2d 157, 696 N.W.2d 574 (citation omitted). Accordingly, Giegler may not relitigate his claim that he is entitled to sentence credit in this matter for time in custody after November 16, 2009.

Next, Giegler cites *State ex rel. Singh v. Kemper*, 2016 WI 67, 371 Wis. 2d 127, 883 N.W.2d 86, and he appears to argue that he is entitled to positive adjustment time under WIS. STAT. § 302.113(2)(b) (2009-10). This question is not before us.

Giegler filed his notice of appeal in this matter on June 14, 2019. Electronic circuit court docket entries indicate that he subsequently filed petitions in the circuit court in April 2020, and October 2020, seeking positive adjustment time.⁴ The docket indicates that the circuit court resolved each petition with a written order, one entered on April 14, 2020, and one entered on October 29, 2020. Because Giegler’s notice of appeal preceded both the petitions for positive adjustment time and the orders resolving those petitions, we lack jurisdiction to consider the orders. *See State v. Baldwin*, 2010 WI App 162, ¶61, 330 Wis. 2d 500, 794 N.W.2d 769 (explaining that a notice of appeal must identify any order appealed from, and a notice of appeal cannot identify an order resolving a motion that has not yet been filed).

Finally, Giegler appears to argue that the DOC is miscalculating his release date by using the wrong “calendar system” to determine the number of days he must serve and by “reactivat[ing his] sentences at will.” As the circuit court explained, however, an inmate who wishes to challenge the actions of the DOC in administering his or her sentence must do so either by pursuing a claim with the DOC or by filing a writ petition in circuit court:

“Once an inmate is sentenced to prison, he or she is under the control of the executive branch and must address his or her objections to the internal operating procedures of the DOC through the I[nmate C[omplaint] R[eview] S[ystem], WIS. ADMIN. CODE

⁴ We may take judicial notice of electronic circuit court docket entries. *See Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522.

ch. DOC 310, and then, if necessary, by writ of certiorari to the circuit court.”

State v. Williams, 2018 WI App 20, ¶4, 380 Wis. 2d 440, 909 N.W.2d 177; *see also State ex rel. Darby v. Litscher*, 2002 WI App 258, ¶1, 258 Wis. 2d 270, 653 N.W.2d 160 (addressing an inmate’s challenge to the DOC’s computation of his confinement time pursuant to the inmate’s petition for a writ of habeas corpus). For all the foregoing reasons, we affirm.

IT IS ORDERED that the circuit court’s order is summarily affirmed. *See* 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