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**DISTRICT III**

May 11, 2021

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

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2019AP2165-CR                      State of Wisconsin v. Jacob L. Simon (L. C. No. 2018CF72)

Before Stark, P.J., Hruz and Seidl, 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).**

This appeal involves Jacob Simon's contention that he is entitled to an additional eleven 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 (2019-20).<sup>1</sup> We summarily affirm.

On February 5, 2018, Simon broke into a home in Rhinelander and stole a weapon. Simon was charged on March 1, 2018, in Oneida County case No. 2018CF72 with burglary and arming himself with a deadly weapon, both as a party to a crime. At the time, Simon was on extended supervision pursuant to a 2004 Marathon County conviction, but he was not immediately taken into custody.

On March 12, 2018, Simon was apprehended by law enforcement officers outside a Kohl's department store in Ramsey County, Minnesota, for retail theft. Simon falsely identified himself as "Timothy James Hunt," and then as "Patrick Earl Simon." Officers discovered his real name while booking him into the Ramsey County Jail. The State of Minnesota charged Simon with two counts of providing false information to police, and single counts each of theft and obstructing legal process.

On March 13, 2018, Simon's probation agent placed a hold on his extended supervision in the 2003 case, based in part on the burglary charged in the present case. On March 19, an Oneida County circuit court judge issued a warrant in the present case for Simon's arrest.

Simon was detained on the warrant on March 24, 2018. Simon was transported to Wisconsin and booked into the Oneida County Jail. He made his initial appearance in this case on March 26, 2018. Simon subsequently pleaded no contest to the burglary count and on

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

November 13, 2018, he was sentenced to three years' initial confinement and five years' extended supervision, with 133 days of sentence credit.

Simon filed a motion for additional sentence credit, contending he was entitled to credit for his custody from March 13, 2018, to November 13, 2018. He argued he was entitled to credit for his jail time in Minnesota because "there does not appear to be any dispute that Simon was arrested in Minnesota for conduct related to this case."

The State disputed that Simon's Minnesota arrest was for conduct related to this case. The circuit court determined that Simon was not entitled to credit for his days in Minnesota custody before the detainer based upon the Oneida County arrest warrant was lodged against him. The court invited the parties to stipulate as to when the detainer was lodged and the additional sentence credit to which Simon was entitled.

The parties stipulated that Simon was taken into custody on the warrant in the present case on March 24, 2018, thus entitling him to a total of 234 days of credit. The stipulation also stated that Simon intended to appeal from the circuit court's anticipated denial of credit for his Minnesota custody from March 13 to March 24. The court ordered sentence credit from March 24, 2018, to November 13, 2018, in the amount of 234 days.

A petitioner seeking additional credit after sentencing bears the burden of proving that (1) he or she was "in custody" during the period at issue, and (2) the custody was "in connection with the course of conduct for which the sentence was imposed." *State v. Zahurones*, 2019 WI App 57, ¶13, 389 Wis. 2d 69, 934 N.W.2d 905. Custody on a probation hold that is due at least in part to the course of conduct for which sentence was imposed should be credited against that sentence. *State v. Hintz*, 2007 WI App 113, ¶¶9-11, 300 Wis. 2d 583, 731 N.W.2d 646. The

presentence custody's connection with the sentence imposed must be factual—a mere procedural connection will not suffice. *State v. Johnson*, 2009 WI 57, ¶33, 318 Wis.2d 21, 767 N.W.2d207.

Simon argues that he is entitled to credit for presentence custody in Minnesota because on March 13, 2018, the Wisconsin Department of Corrections placed an extended supervision hold in his 2003 case, which was due in part to the Rhinelander burglary for which he was charged in the present case. To be entitled to credit in this case, however, Simon must demonstrate that Minnesota authorities held him, at least in part, for the Rhinelander burglary.

Simon has not met his burden. The record indicates that Ramsey County, Minnesota, authorities arrested Simon for a local theft outside a Minnesota Kohl's store on March 12, 2018, the day before the extended supervision hold was issued in Wisconsin. The record on appeal is void of any indication that Simon's arrest and custody in Minnesota were connected with the Rhinelander burglary.

Nevertheless, Simon argues his agent “must have learned of Simon's arrest, as she put a hold on Simon.” Simon further contends—without citation to the evidence—that “the evidence shows the agent contacted Minnesota and put a hold on Simon.” Simon appears to imply that Minnesota put the hold on Simon the day after his Minnesota arrest, i.e., March 13, 2018.

Simon's implication in this regard is speculative at best, and we will not resolve cases on the basis of speculation or theories about what may have occurred. *See, e.g., State v. Carter*, 2010 WI 77, ¶63 n.48, 327 Wis. 2d 1, 785 N.W.2d 516. There is no evidence that the Minnesota jail time was in any way connected to the Wisconsin case or to Simon's extended supervision hold. A hold was placed in Wisconsin, but there is no factual basis to conclude that Simon's

agent contacted Minnesota about it, nor that the Minnesota custody was based, even in part, on the existence of the Wisconsin extended supervision hold. While the Rhinelander burglary could have provided Minnesota authorities with another reason for holding Simon, that possibility does not satisfy Simon's burden to prove Minnesota actually held him for this reason—or that Minnesota authorities were even aware of his Wisconsin conduct or of the March 13 extended supervision hold.

Quite simply, there is no factual connection” between the Minnesota arrest and the Wisconsin conduct for which Simon was sentenced. Absent such a showing, Simon has failed to meet his burden of demonstrating that his Minnesota custody was in connection with the course of conduct for which the Wisconsin sentence was imposed. Simon is not entitled to sentence credit for this period of custody in Minnesota. Simon was detained on the warrant on March 24, 2018, and all of the evidence indicates that the circuit court correctly awarded sentence credit for the period of time from March 24, 2018 to the November 13, 2018 date of sentencing.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. 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*