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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

May 19, 2021

To:

Hon. Richard J. Nuss
Circuit Court Judge
Fond du Lac County Courthouse
160 S. Macy St.
Fond du Lac, WI 54935

Ramona Geib
Clerk of Circuit Court
Fond du Lac County Courthouse
160 S. Macy St.
Fond du Lac, WI 54935

Donald V. Latorraca
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

James A. Rebholz
Rebholz & Auberry
1414 Underwood Ave., Ste. 400
Wauwatosa, WI 53213

Eric Toney
District Attorney
Fond du Lac County
160 S. Macy St.
Fond du Lac, WI 54935

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

2019AP2080-CR State of Wisconsin v. Roy A. Whitelow (L.C. #2013CF356)

Before Neubauer, C.J., Reilly, P.J., and Davis, J.

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).

Roy A. Whitelow appeals from an order denying, in part, his motion for 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).¹ We affirm.

In 2015, Whitelow was convicted of first-degree reckless homicide as a repeater in Fond du Lac County case No. 2013CF356. The circuit court imposed a sentence of seventeen and one-half years of initial confinement and fifteen years of extended supervision. It ordered the sentence to run consecutive to any other sentence, which included one from Fond du Lac County case No. 2013CF74.²

In 2019, Whitelow moved for sentence credit in case No. 2013CF356. In his motion, Whitelow noted that his sentence in case No. 2013CF74 had been vacated and that his new sentence in that case was ordered to run concurrent. Relying on WIS. STAT. § 973.04, he asked the circuit court to apply credit for time spent in custody before resentencing in case No. 2013CF74 towards his sentence in case No. 2013CF356.

The circuit court denied Whitelow's motion, in part, for lack of "basis or standing." However, it agreed to grant a lesser period of sentence credit for the presentence period of incarceration in case No. 2013CF356. This appeal follows.

On appeal, Whitelow renews his request for additional sentence credit, arguing that the circuit court's order was erroneous. As noted, his motion for sentence credit was based on WIS. STAT. § 973.04.

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

² Whitelow was convicted of battery by a prisoner in case No. 2013CF74. He was originally sentenced in 2014 to four years of initial confinement and one year of extended supervision.

WISCONSIN STAT. § 973.04 is titled, “Credit for imprisonment under earlier sentence for the same crime,” and provides, “When a sentence is vacated and a new sentence is imposed upon the defendant for the same crime, the department shall credit the defendant with confinement previously served.” The interpretation and application of a statute to a set of facts presents a question of law that we review de novo. *Acuity v. Albert*, 2012 WI App 87, ¶8, 343 Wis. 2d 594, 819 N.W.2d 340.

Here, we agree with the circuit court that Whitelow was not entitled to additional sentence credit under WIS. STAT. § 973.04. Both the title and text of that statute limit its application to credit for “the same crime.” Therefore, it did not authorize the circuit court to award Whitelow credit towards his sentence in case No. 2013CF356 (first-degree reckless homicide as a repeater) based on the time he spent in custody before resentencing in case No. 2013CF74 (battery by a prisoner). Because the circuit court correctly recognized that it lacked a basis to award Whitelow credit applicable for a different crime, we affirm.

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