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DISTRICT III

September 8, 2021

To:

Hon. Michael A. Schumacher
Circuit Court Judge
Electronic Notice

Susan Schaffer
Clerk of Circuit Court
Eau Claire County
Electronic Notice

Gary King
Electronic Notice

Jacob J. Wittwer
Electronic Notice

Daniel S. Haynes 545178
Stanley Correctional Inst.
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You are hereby notified that the Court has entered the following opinion and order:

2020AP882-CR

State of Wisconsin v. Daniel S. Haynes (L. C. No. 2014CF1117)

Before Stark, P.J., Hruz 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).

The dispositive issue in this case is whether Daniel Haynes is entitled to additional sentence credit for the six months of custody time he served as a condition of his probation in an unrelated case. 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.

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

Haynes was charged in Eau Claire County case No. 2014CF1117 (“the present case”) with one count of burglary of a building or dwelling as a repeat offender after he broke into a storage unit and stole construction tools and other items. Haynes pleaded no contest, was convicted without the repeater enhancer, and the circuit court ordered that he be placed on four years’ probation.

Shortly thereafter, Haynes was convicted in Chippewa County case No. 2015CF163 (“the Chippewa County case”) of burglary of a building or dwelling. The circuit court withheld sentence and placed Haynes on four years’ probation, and it imposed and stayed six months’ jail time as a condition of that probation.

Haynes then committed multiple drug- and firearms-related probation violations, and he was returned to Chippewa County to serve the six months’ conditional jail time. Subsequently, the Wisconsin Department of Corrections revoked Haynes’ probation in both the present case and the Chippewa County case for operating a motor vehicle under the influence of methamphetamine and possession of methamphetamine. The revocation order was forwarded to the circuit court, and at the sentencing after revocation hearing in the present case, the parties agreed that Haynes was entitled to 204 days of sentence credit, which the court ordered. This 204 days of credit did not include the six months’ conditional jail time served in the Chippewa County case.

Haynes, pro se, then filed correspondence with the circuit court in the present case seeking 180 days of additional sentence credit for the conditional jail time he served in the Chippewa County case. The circuit court directed the State to respond, and the court thereafter denied the motion. Haynes filed a reconsideration motion with a photocopy of the envelope

containing the State's response, which Haynes argued was an ex parte communication because it was not mailed to Haynes until after his motion was denied. The motion for reconsideration was denied.

We conclude that the additional 180 days of sentence credit is not available in the present case for Haynes' conditional jail time served in the Chippewa County case because that custody time was not "in connection with" the Eau Claire burglary for which Haynes was sentenced in the present case. See *State v. Zahurones*, 2019 WI App 57, ¶13, 389 Wis. 2d 69, 934 N.W.2d 905. The jail time for which Haynes seeks credit was imposed as a condition of probation in the Chippewa County case only, and there is no factual connection between the Chippewa County case in which the conditional jail time was served and the Eau Claire County burglary for which Haynes was sentenced in the present case. See *State v. Floyd*, 2000 WI 14, ¶17, 232 Wis. 2d 767, 606 N.W.2d 155, *abrogated on other grounds by State v. Straszkowski*, 2008 WI 65, 310 Wis. 2d 259, 750 N.W.2d 835.

Haynes argues that a "connection" exists between the present case, the Chippewa County case, and a Buffalo County case in which he was convicted for possession of methamphetamine, apparently because the conduct that led to his conviction in the Buffalo County case also led to his probation revocations in the present and Chippewa County cases. However, WIS. STAT. § 973.155(1) requires a factual connection between the custody and the conduct for which the sentence is imposed. See *Floyd*, 232 Wis. 2d 767, ¶17. A "procedural or other tangential connection will not suffice." *Id.* Haynes' six months' jail time was served as a condition of his probation in a case from another county that was in no way factually related to the criminal conduct for which he was sentenced in the present case, or to the criminal conduct in the Buffalo

County case for which his probation orders were revoked. Accordingly, Haynes is not entitled to additional sentence credit.

Haynes also reiterates on appeal his argument that the circuit court's order denying sentence credit should be reversed because the State's response to his motion for sentence credit was an ex parte communication. The response was not ex parte as it was requested by the court in response to Haynes' motion and, therefore, was done neither at the instance of one party only, nor for the benefit of one party only. Moreover, the court did not direct Haynes to file a reply, and he was not entitled to one. The date the State sent the copy of its response to Haynes is therefore immaterial. In addition, Haynes had a full opportunity to brief the sentence credit issue on appeal, and this court decides independently whether he is entitled to additional credit. *See Zahurones*, 389 Wis. 2d 69, ¶12.

We also discern Haynes to argue that because he served the six months' conditional jail time, he was "off probation" in the Chippewa County case and his "sentence" was completed at the conclusion of that jail time. He apparently contends that his revocation and sentence in the Chippewa County case are invalid and must be vacated. However, the Chippewa County case is not on review, and the revocation order and sentence cannot be vacated in the present appeal. In any event, the time Haynes served was a condition of probation, not a sentence. *See State v. Yanick*, 2007 WI App 30, ¶9, 299 Wis. 2d 456, 728 N.W.2d 365. Haynes remained on probation when serving that conditional jail time, and his probation continued when he completed the conditional jail time. Therefore, he was still on probation in the Chippewa County case when he was revoked and sentenced.

Upon the foregoing,

IT IS ORDERED that the orders are 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