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**DISTRICT IV**

October 7, 2021

To:

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Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
Dane County Courthouse  
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Jacob J. Wittwer  
Electronic Notice

Adam D. Batz  
1332 East Road Two  
Edgerton, WI 53534

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

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2020AP862-CR                      State of Wisconsin v. Adam D. Batz (L.C. # 2012CF285)

Before Blanchard, P.J., Kloppenburg, 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).**

Adam Batz, pro se, appeals a circuit court order denying his motions 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).<sup>1</sup> We summarily affirm.

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

After entering into a plea agreement, Batz was convicted of burglary in Dane County circuit court case number 2012CF191, and of intimidation of a victim and false imprisonment in Dane County circuit court case number 2012CF285. Both cases were handled at a single sentencing hearing.

In case number 2012CF191 (“the burglary case”), the circuit court withheld sentence and placed Batz on probation for three years, with the first year to be served as conditional jail time. The court ordered that, after Batz served six months in jail, he would have the option of participating in the Treatment Alternative Program. If he was found not to be eligible for the program or did not participate, Batz would serve the full year.

In the present case, case number 2012CF285, the circuit court imposed sentences totaling four years of initial confinement and four years of extended supervision, and stayed the sentences for a period of six years of probation, to run concurrent with the sentence in the burglary case. The court also ordered one year of jail time as a condition of probation in the present case, which the court stayed under the condition that Batz complete domestic violence counseling by January 1, 2014. Batz completed the counseling by the deadline and, as a result, the one year of conditional jail time was permanently stayed.

In September 2017, Batz was discharged from his probation in the burglary case. In the present case, Batz’s probation was revoked in January 2019. Batz was then taken into custody of the Department of Corrections to serve his sentences.

Between March and September of 2019, Batz sent multiple letters to and filed pro se motions in the circuit court, asserting that he was entitled to sentence credit of varying amounts. The circuit court issued a decision on December 13, 2019, denying Batz’s requests for sentence

credit. In its decision, the circuit court addressed a recurring argument from Batz that his time served in the burglary case should be credited against his sentences in the present case. The court explained that, because Batz successfully completed probation and was discharged, no sentence was ever imposed in the burglary case. The court stated, “The jail time you served as a condition of probation on 12CF191 cannot be credited against your sentences in 12CF285.” The court further explained, “[A]lthough it is often true that jail credit in one case can be applied both to the sentence in that case as well as to the sentence in a concurrent case, you did not have concurrent sentences.” The court concluded by stating that, because Batz never received a sentence in the burglary case, the jail time served as a condition of probation in that case could not be applied against any other probationary term or sentence. Batz now appeals.

Batz’s appellant’s brief is difficult to follow. As best we understand, Batz appears to argue, as he did in the circuit court, that he is entitled to sentence credit in the present case for the conditional jail time he served in the burglary case. Batz asserts that, because he was serving concurrent periods of probation in both cases, any conditional jail time served should count as “dual credit” toward any sentences imposed in both cases.

“So-called ‘dual credit’—where an offender can receive credit for a single episode of jail time toward two (or more) sentences” may be granted for sentences that are concurrent. *State v. Rohl*, 160 Wis. 2d 325, 330, 466 N.W.2d 208 (Ct. App. 1991). However, that is not the case here. No sentence was ever imposed in the burglary case. Rather, sentence was withheld in favor of probation with conditional jail time, which Batz successfully completed, and he was discharged from probation in the burglary case. “Probation is not a sentence and, therefore, jail time served as a condition of probation is not a sentence.” *State v. Yanick*, 2007 WI App 30, ¶9,

299 Wis. 2d 456, 728 N.W.2d 365. Batz is not entitled to sentence credit in the current case for his jail time served as a condition of his probation in the burglary case.

Batz also argues that he is entitled to 38 days of sentence credit for time spent in the county jail following his arrest for the conduct in the present case on May 18, 2011, until his release on June 24, 2011. The State asserts in its respondent's brief that Batz may be entitled to credit for this time under WIS. STAT. § 973.155(1), but that Batz has provided no evidence to establish whether those 38 days were already credited to this case or another case. In the reply brief, Batz attaches a copy of his revocation order and warrant in an attempt to bolster his argument. However, an appendix to a brief may not be used to supplement the record. *See Reznichek v. Grall*, 150 Wis. 2d 752, 754 n.1, 442 N.W.2d 545 (Ct. App. 1989). In addition, as a general rule, this court will not consider arguments raised for the first time in a reply brief. *Schaeffer v. State Pers. Comm'n, Dep't of Military Affairs*, 150 Wis. 2d 132, 144, 441 N.W.2d 292 (Ct. App. 1989). We therefore reject Batz's argument that he is entitled to 38 days of sentence credit for time spent in custody after his arrest for the conduct in the present case. However, nothing in this opinion should be interpreted to preclude Batz from raising the issue, along with any relevant evidence, in the circuit court in the future.

Any arguments in Batz's briefs that we have not addressed here are unsupported by adequate factual and legal citations or are otherwise undeveloped, and we reject them on that basis. *See Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463, *abrogated on other grounds by Wiley v. M.M.N. Laufer Family Ltd. P'ship*, 2011 WI App 158, 338 Wis. 2d 178, 807 N.W.2d 236 (lack of record citations); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments).

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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*