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**DISTRICT II**

March 23, 2022

To:

Hon. Faye M. Flancher  
Circuit Court Judge  
Electronic Notice

Andrea Taylor Cornwall  
Electronic Notice

Samuel A. Christensen  
Clerk of Circuit Court  
Racine County Courthouse  
Electronic Notice

Patricia J. Hanson  
Electronic Notice

Colin Jamieson Gordon  
3710 Douglas Ave., Unit 206  
Racine, WI 53402

Winn S. Collins  
Electronic Notice

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

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2018AP2238-CRNM      State of Wisconsin v. Colin Jamieson Gordon (L.C. #2014CF1112)

Before Gundrum, P.J., Neubauer and Kornblum, J.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).**

Colin Jamieson Gordon appeals a corrected judgment of conviction awarding him five days of sentence credit. His appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2019-20)<sup>1</sup> and *Anders v. California*, 386 U.S. 738, 744 (1967). Gordon received a

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted. The no-merit report was filed by Attorney Carly Cusack, who has been replaced by Attorney Andrea Taylor Cornwall as Gordon's appellate counsel.

copy of the report, was advised of his right to file a response, and elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be summarily affirmed because there are no arguably meritorious issues for appeal. *See* WIS. STAT. RULE 809.21.

On August 11, 2014, Gordon was charged in the instant Racine County Circuit Court case with one count of possessing child pornography. While this case was pending, Gordon was charged in Walworth County with unrelated offenses that occurred in 2012 but were discovered during the Racine County investigation. Gordon proceeded to sentencing in Walworth County first, where he received probation, including one year of conditional jail time to commence on December 18, 2015. In the Racine County case, Gordon was sentenced on June 24, 2016, to three years of initial confinement followed by three years of extended supervision. He was awarded five days of presentence credit to account for time spent in custody from August 7, 2014, the date of his arrest, to August 11, 2014, the date he posted cash bond.<sup>2</sup>

In January 2018, Gordon filed a pro se motion seeking a total of 194 days of sentence credit. According to Gordon, this number represented the five days awarded pursuant to his original judgment, plus the time spent in custody serving his Walworth County conditional jail time, which started on December 18, 2015, through the date of his Racine County sentencing,

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<sup>2</sup> Shortly after his Racine County sentencing, on July 14, 2016, an amended judgment was entered awarding Gordon 120 days of sentence credit. The basis for this amendment is not clear from the record. It appears to relate to a March 1, 2016, stipulation and order modifying his Racine County bond to a “Huber” bond. The 120 days may represent the five days initially awarded plus an additional 115 days for time Gordon spent serving his Walworth County conditional jail time after the March 1, 2016 bond modification until his June 24, 2016 Racine County sentencing.

which occurred on June 24, 2016. Because the July 2016 amended judgment had awarded 120 days, Gordon's motion requested an additional seventy-four days of sentence credit.

The Circuit Court denied Gordon's sentence credit motion, explaining that the July 14, 2016 judgment was amended in error and that by law, Gordon was only entitled to credit for the five days spent in custody from the date he was arrested until he posted bond. The court entered a corrected judgment of conviction awarding Gordon five days of sentence credit. This no-merit appeal follows.

The sentence credit statute provides that credit is due for time spent in custody that is "in connection with the course of conduct for which sentence was imposed." WIS. STAT. § 973.155(1)(a). In his sentence credit motion, Gordon asserted that his "Racine and Walworth cases are in connection with each other because both cases arose from the same arrest."

We agree with appointed counsel's analysis concluding that, for purposes of sentence credit, Gordon's Walworth County conditional jail time was not factually connected with the course of conduct underlying his Racine County sentence, as required by *State v. Johnson*, 2009 WI 57, ¶33, 318 Wis. 2d 21, 767 N.W.2d 207. For his Racine County case, Gordon possessed child pornography in Racine. His Walworth county case involved fondling a sleeping juvenile's genitals in Walworth County. While the conduct underlying his Walworth County case might have been discovered during the course of the Racine investigation, the acts underlying the two cases are factually unrelated. Any argument that Gordon's custody, ordered pursuant to his conviction for fondling a juvenile in Walworth in 2012, should also be credited toward his sentence for possessing child pornography in Racine in 2014, lacks arguable merit.

To the extent Gordon’s sentence credit motion relied in part on the March 1, 2016 modification to a “Huber” bond, his position lacks arguable merit. We have independently reviewed the record, including the “Stipulation and Order Modifying Bond to Huber Bond” and Gordon’s pro se “Notice of and Motion for Sentencing (sic) Credit Pursuant to WIS. STAT. § 973.155.” Neither the language of the “Huber” bond nor the authority cited in Gordon’s motion persuades us that he is entitled to additional sentence credit. As the circuit court stated in its written decision denying Gordon’s motion, Gordon posted cash bond in his Racine County case in August 2014, and remained out of custody in connection with his Racine case “until June 24, 2016 [,] when he was once again taken into custody after sentencing.” That Gordon was sentenced and given Huber privileges in a Walworth County case “does not affect sentence credit on this case.”

Therefore,

IT IS ORDERED that the corrected judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Andrea Taylor Cornwall is relieved from further representing Colin Jamieson Gordon in this appeal. *See* WIS. STAT. RULE 809.32(3).

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*