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DISTRICT IV

March 31, 2022

To:

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Circuit Court Judge
Electronic Notice

Hon. John D. Hyland
Circuit Court Judge
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Clerk of Circuit Court
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1216-CR State of Wisconsin v. Eric T. Alston (L.C. # 2009CF1694)

Before Kloppenburg, Fitzpatrick, 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).

Eric Alston, pro se, appeals a circuit court order denying 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 summarily affirm.

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

On August 9, 2012, Alston was sentenced in this case after revocation of his probation. The circuit court sentenced Alston to seven years of initial confinement and three years of extended supervision for one count of intentional child abuse as a repeater. *See* WIS. STAT. §§ 948.03(2)(b), 939.62(1)(b). The court ordered that the sentence would run consecutively to Alston's sentence in Dane County Circuit Court case number 2009CF1695.

On April 22, 2020, Alston moved the circuit court for sentence credit. Alston requested that 392 days of sentence credit be applied to the instant case for time he served under supervision within the Department of Intensive Sanctions (DIS) in conjunction with an older case, Dane County Circuit Court case number 1994CM823. Alston also requested that 258 days of credit be applied to the instant case for time he served in custody from October 10, 2009 to June 28, 2010, prior to being sentenced in another case, Dane County Circuit Court case number 2009CM2707. The circuit court denied Alston's motion, and Alston appealed.

Alston argues in his appellant's brief that he is entitled to sentence credit for the time period from December 6, 2011 to July 28, 2012. The State asserts in its respondent's brief that Alston is raising this argument for the first time on appeal and that, therefore, this court should disregard it. *See Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86, ¶45, 327 Wis. 2d 572, 786 N.W.2d 177 (when an issue was never raised in the circuit court, we treat the issue as having been forfeited). We need not determine whether Alston forfeited his right to seek sentence credit for the time period from December 6, 2011 to July 28, 2012, however, because we reject his argument regarding that time period as undeveloped. Alston fails to support the argument with any citations to the record and, therefore, we need not address it. *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.

Next, Alston argues that he is entitled to 392 days of sentence credit for time he served under supervision within DIS between July 1996 and July 1997. Alston asserts that the circuit court “used some of that sentence credit” toward one of his prior cases, without specifying which case or how much credit was used. Alston requests that “the rest” of the credit be applied against his sentence in this case. A defendant is entitled to credit “for all days spent in custody in connection with the course of conduct for which sentence was imposed.” WIS. STAT. § 973.155(1)(a). A defendant is not entitled to sentence credit for time spent serving a sentence on a different, unrelated charge. *State v. Tuescher*, 226 Wis. 2d 465, 470, 595 N.W.2d 443 (Ct. App. 1999). A defendant seeking sentence credit has the burden of demonstrating both that he or she was in custody for the relevant time period, and that the custody was in connection with the course of conduct for which the sentence was imposed. *State v. Carter*, 2010 WI 77, ¶11, 327 Wis. 2d 1, 785 N.W.2d 516. As explained below, Alston has failed to meet that burden here.

Alston is seeking sentence credit for time he spent in custody on a charge entirely unrelated to the child abuse count in the instant case. According to the appellant’s brief, the time that Alston served under DIS supervision was connected to his sentence in Dane County Circuit Court case number 1994CF823, in which Alston was charged with eluding an officer. The conduct that led to Alston’s child abuse conviction and sentence in the instant case did not occur until over a decade later, in 2009. Alston fails to demonstrate that the time he spent under DIS supervision as an alternative to revocation in case number 1994CF823 bears any connection to the course of conduct for which the sentence was imposed in this case. Therefore, we reject

Alston's argument that he is entitled to apply 392 days of sentence credit, or any portion thereof, against his sentence in this case.

Finally, Alston argues that the sentencing court failed to award him 258 days of pre-sentence credit. Alston asserts that he was arrested on October 10, 2009 and then "sat within the Dane County jail" until he was placed on probation on June 28, 2010 and "released back into the community." Alston's argument is problematic for two reasons. First, the record belies Alston's claim that he did not receive credit for the time he spent in custody after his arrest but before he was sentenced. At the original sentencing hearing in this case, held on June 28, 2010, the court awarded Alston "208 days of credit, applied towards 09CM2707[.]" Second, the circuit court was correct in its calculation that Alston was entitled to 208 days of credit, as opposed to the 258 days that Alston now requests. It is undisputed that Alston was arrested and taken into custody on October 10, 2009. Alston asserts that he remained in custody until his sentencing on June 28, 2010. However, the State asserts that Alston was released on bond on May 5, 2010, and that the number of days between October 10, 2009 and May 5, 2010 equals 208, thus matching the court's award of 208 days of sentence credit in case number 2009CM2707. The State's position is supported by the record, which indicates that a signature bond was set and signed on May 5, 2010.

To the extent that Alston is arguing that he should be awarded an additional 208 days of sentence credit, on top of the 208 days he already received in case number 2009CM2707, we reject that argument. The circuit court ordered the sentence in the instant case to run consecutively to the sentence in case number 2009CF1695, which runs consecutive to Alston's sentence in case number 2009CM2707. Thus, the circuit court properly applied all 208 days of

credit to the sentence in case number 2009CM2707, which was the first sentence imposed. *See State v. Obriecht*, 2015 WI 66, ¶36, 363 Wis. 2d 816, 867 N.W.2d 387 (“when sentences are consecutive, sentence credit is not issued to more than one sentence so long as the first sentence to be served is sufficient to receive the sentence credit at issue”). The circuit court properly denied Alston’s motion for additional sentence credit.

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals