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DISTRICT I

October 25, 2022

To:

Hon. Rebecca Kiefer
Circuit Court Judge
Electronic Notice

Donald V. Latorraca
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Samuel Lee Isom 328030
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P.O. Box 351
Waupun, WI 53963-0351

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

2021AP2162-CR

State of Wisconsin v. Samuel Lee Isom (L.C. # 2019CF4339)

Before Brash, C.J., Donald, P.J., and Dugan, 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).

Samuel Lee Isom, *pro se*, appeals from a judgment convicting him of child abuse and from the order denying his postconviction motion for an additional 428 days of sentencing credit. Upon our review of the briefs and record, we conclude at conference that this matter 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.

In 2018, Isom pled guilty to one count of possession of THC, as a second offense, and one count of felony bail jumping in Milwaukee County Circuit Court case No. 2015CF1569. The circuit court imposed and stayed two two-year terms of imprisonment, bifurcated as one year of initial confinement and one year of extended supervision, to be served consecutively. The circuit court withheld the sentence and placed Isom on probation for eighteen months.

While on probation, Isom was arrested and charged with child abuse and second-degree recklessly endangering safety of that same child. As a result of the arrest, a probation hold was placed on Isom in case No. 2015CF1569. Isom's probation was revoked on February 25, 2020. Isom was transferred to the prison system on March 4, 2020.

Isom pled guilty to child abuse on April 9, 2021.² On May 7, 2021, the circuit court sentenced Isom to three years and six months of imprisonment, bifurcated as eighteen months of initial confinement and two years of extended supervision. The circuit court ordered the sentence concurrent to the revoked sentences Isom was already serving. The circuit court granted Isom 159 days of sentencing credit for the period of September 27, 2019 (the date of Isom's arrest in the child abuse case) to March 4, 2020, (the date of Isom's transfer to the prison system following revocation).³

² The State agreed to dismiss and read in the second-degree recklessly endangering safety charge and two counts of intimidation of a witness charged in a third case.

³ At one point, the circuit court reduced Isom's awarded credit from 159 days to 151 days based on its belief that Isom was only entitled to credit from the date of his arrest on September 27, 2019, to the date he was revoked in case No. 2015CF1569 on February 25, 2020. However, following this court's decision in *State v. Slater*, 2021 WI App 88, 400 Wis. 2d 93, 968 N.W.2d 740, the circuit court reinstated the 159-day credit.

In May 2021, Isom, *pro se*, wrote a letter to the circuit court stating that he was entitled to 587 days of sentencing credit—an additional 428 days from the 159 days initially granted by the circuit court. Isom’s calculation began from the date of his arrest—September 27, 2019, to the date of his sentencing—May 7, 2021. The circuit court denied Isom’s request, stating that he was “not entitled to credit after March 4, 2020, because he was considered to be serving his sentence in 15CF001569.”

Isom continued to file challenges to his sentence credit determination and the circuit court continued to reject his challenges. As relevant to this appeal, Isom now appeals from the circuit court’s May 2021 order denying his motion for an additional 428 days of sentencing credit.

Whether Isom is entitled to additional sentence credit under the facts of this case presents a question of law that we review independently. See *State v. Abbott*, 207 Wis. 2d 624, 628, 558 N.W.2d 927 (Ct. App. 1996). The sentence credit statute provides that a convicted offender “shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed.” WIS. STAT. § 973.155(1)(a). In deciding whether an offender is entitled to a particular amount of credit under the statute, a court must determine: (1) whether the defendant was “in custody” during the relevant time period; and (2) whether that custody was “in connection with the course of conduct for which sentence was imposed.” *State v. Johnson*, 2009 WI 57, ¶27, 318 Wis. 2d 21, 767 N.W.2d 207 (citation omitted).

It is undisputed that Isom was “in custody” from September 27, 2019, to May 7, 2021. The disputed issue is whether that custody was “in connection with the course of conduct for which” Isom’s sentence on the child abuse charge was imposed. *See id.*

While there was initially a connection between Isom’s probation hold in case No. 2015CF1569 and the child abuse charge, that connection was “severed when the custody resulting from the probation hold was converted into a revocation and sentence.” *See State v. Beets*, 124 Wis. 2d 372, 379, 383, 369 N.W.2d 382 (1985). Accordingly, when Isom was transferred into the prison system on March 4, 2020, to serve his sentence in case No. 2015CF1569, any connection between that case and the child abuse charge was lost. In other words, once Isom was sentenced following his revocation, whether he was also awaiting trial on the child abuse charge was “irrelevant” because, “[e]ven had the [child abuse] charge been dismissed, [Isom] would still have been in confinement” pursuant to his sentence in case No. 2015CF1569. *See id.*, 124 Wis. 2d at 379.

Moreover, and contrary to Isom’s implication, the fact that the circuit court imposed a concurrent sentence in the child abuse case does not automatically entitle Isom to additional sentencing credit. WISCONSIN STAT. § 973.155 does not require “that credit applied toward one sentence also be applied toward a second sentence if the basis for applying the same credit to both sentences is merely that the sentences are concurrent and are imposed at the same time.” *Johnson*, 318 Wis. 2d 21, ¶76.

The fact that sentences are concurrent and are imposed at the same time does not alter the statutory mandate that credit toward service of a sentence be based on custody that is “in connection with” the course of conduct giving rise to that sentence: i.e., custody factually connected with the course of conduct for which sentence was imposed.

Id.

Applying the established case law, we conclude that Isom is not entitled to an additional 428 days of sentencing credit than that granted by the circuit court. For the foregoing reasons, we affirm the circuit court.

IT IS ORDERED that the judgment and order 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