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**DISTRICT II**

December 21, 2022

To:

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Circuit Court Judge  
Electronic Notice

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Clerk of Circuit Court  
Waukesha County Courthouse  
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Eric Michael Muellenbach  
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You are hereby notified that the Court has entered the following opinion and order:

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2022AP163-CR                      State of Wisconsin v. Anthony P. King (L.C. #2019CF1637)

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

Anthony P. King appeals an 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).<sup>1</sup> The circuit court properly denied King's motion for sentence credit. We affirm.

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

In Ozaukee County Circuit Court Case No. 2014CF10 (the “2014 case”), King was convicted of three drug-related felonies. King was sentenced to four years of initial confinement and five years of extended supervision.

On January 25, 2019, King was taken into custody for violating his supervision in the 2014 case, based in part on an investigating detective’s conclusion that King had used stolen credit cards on January 9, 2019. The CCAP record for the 2014 case shows that King’s extended supervision was revoked on March 12, 2019.<sup>2</sup> His mandatory release date after revocation in the 2014 case was July 25, 2021.

On November 19, 2019, the State filed a criminal complaint in the case underlying this appeal, Waukesha County Circuit Court Case No. 2019CF1637 (the “2019 case”), charging King with five counts of identity theft. An arrest warrant was issued on December 9, 2019, but it was subsequently determined that King was already incarcerated pursuant to the revocation sentence in the 2014 case. Thus, although bail was set in the 2019 case, King remained confined pursuant to the revocation sentence during the pendency of the new charges.

On March 5, 2020, King pled guilty to one count of identify theft. The remaining four counts were dismissed and read in at sentencing. The sentencing hearing took place on the same date as King’s plea. The circuit court sentenced King to three years of initial confinement and three years of extended supervision, to run concurrent to any other sentence. The court determined that no sentence credit was due.

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<sup>2</sup> CCAP, an acronym for Wisconsin’s Consolidated Court Automation Programs, is a website that contains information entered by court staff. See *Kirk v. Credit Acceptance Corp.*, 2013 WI App 32, ¶5 n.1, 346 Wis. 2d 635, 829 N.W.2d 522. We may take judicial notice of CCAP records pursuant to WIS. STAT. § 902.01. See *Kirk*, 346 Wis. 2d 635, ¶5 n.1.

In April 2020, King filed a pro se postconviction motion seeking sentence credit from January 9, 2019, the date the crimes were committed in the 2019 case, through the date he was sentenced, March 5, 2020. The circuit court denied the motion.

On appeal, King now asserts that he is entitled to eighty-seven days of sentence credit from the date the arrest warrant was issued in the 2019 case, December 9, 2019, through the date of his sentencing, March 5, 2020. We reject his claim.

Under WIS. STAT. § 973.155(1)(a), a convicted offender is entitled to 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.” Whether a defendant is entitled to sentence credit under § 973.155 is a question of law that we review independently. *State v. Lange*, 2003 WI App 2, ¶41, 259 Wis. 2d 774, 656 N.W.2d 480 (2002).

Here, there is no dispute that King was “in custody” from December 9, 2019, to March 5, 2020, after his sentence in the 2014 case was revoked in March 2019. While in custody, King was charged with committing new unrelated and separate crimes—the identity theft offenses—on November 19, 2019. He is not entitled to credit on the sentence imposed in the 2019 case for time spent in custody pursuant to his revocation sentence on the earlier crime because that period of “custody” was not “in connection with the course of conduct” for which the sentence in the 2019 case was imposed. *See* WIS. STAT. § 973.155(1); *State v. Beets*, 124 Wis. 2d 372, 374, 369 N.W.2d 382 (1985) (holding that defendant was not entitled to credit on sentence for new burglary offense for time spent in custody following revocation sentence for drug offenses, which severed the connection between the defendant’s custody and the new burglary charge). A revocation sentence under § 973.155 is not “in connection with” a new charge—even one that

causes the revocation—because the revocation sentence is based on the underlying conduct for which King was initially sentenced and would be served regardless of the new charge. *See Beets*, 124 Wis. 2d at 379. Thus, even if the instant charges in the 2019 case had been dismissed, King still would have been in confinement.

King contends that *State v. Yanick*, 2007 WI App 30, ¶1, 299 Wis. 2d 456, 728 N.W.2d 365, entitles him to sentence credit. We disagree. As the State contends, *Yanick* is limited to its facts, which involved credit for time served as a condition of probation which overlapped with the concurrent service of a separate sentence, rendering it inapplicable here. As our supreme court explained in *State v. Johnson*, 2009 WI 57, 318 Wis. 2d 21, 767 N.W.2d 207, “[b]ecause the defendant in *Yanick* was ultimately sentenced for the same crime for which he was in custody as a condition of his probation, the court of appeals determined that time in custody was ‘in connection with the course of conduct for which sentence [was] imposed.’” *Johnson*, 318 Wis. 2d 21, ¶44 (alteration in original) (quoting WIS. STAT. § 973.155(1)(a)). *State v. Beets* is controlling, and thus, the circuit court did not err in denying sentence credit for the time during which King served his revocation sentence before he was sentenced for a separate crime in this 2019 case.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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*