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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

April 20, 2023

To:

Hon. Ellen K. Berz
Circuit Court Judge
Electronic Notice

Anne Christenson Murphy
Electronic Notice

Hon. Daniel R. Moeser
Reserve Judge

Luis A. Estrada-Jimenez 510266
c/o Stanley Correctional Institution
100 Corrections Dr.
Stanley, WI 54768

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

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

2021AP1836-CR

State of Wisconsin v. Luis A. Estrada-Jimenez
(L.C. # 2005CF2616)

Before Kloppenburg, Graham, 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).

Luis A. Estrada-Jimenez, pro se, appeals an amended judgment of conviction and an order denying reconsideration as to Estrada-Jimenez's request for additional 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 (2021-22).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In March 2007, Estrada-Jimenez was convicted of first-degree intentional homicide following a jury trial, and sentenced to life in prison with eligibility for extended supervision after twenty-two years of confinement. At sentencing, the circuit court noted that the parties had not provided a computation of sentence credit. The State indicated that sentence credit was due from the date of Estrada-Jimenez's arrest in Puerto Rico, but that the State did not have the arrest date. The court stated that sentence credit would be done by stipulation if possible and, if not, the court would hold another hearing. In June 2007, the court entered a judgment of conviction that imposed life imprisonment with eligibility for extended supervision after twenty-two years and awarded zero days of sentence credit.

In April 2021, Estrada-Jimenez moved for two years of sentence credit. Estrada-Jimenez argued that he was incarcerated in Puerto Rico "under a Wisconsin warrant" and was awaiting trial from 2005 to 2007. Estrada-Jimenez argued that the circuit court decided to do sentence credit "by stipulation" and that the court then "stipulated" that Estrada-Jimenez was entitled to two years of sentence credit. Estrada-Jimenez argued that the court made him eligible for extended supervision after twenty-two years based on the court's finding that he was entitled to two years of sentence credit, with the intention that he would serve twenty years of confinement.

The circuit court granted Estrada-Jimenez a hearing on his motion for sentence credit. At the conclusion of the hearing, the court found that the only evidence as to the date Estrada-Jimenez's incarceration began in Puerto Rico was the extradition waiver he signed on December 5, 2005. Accordingly, the court granted Estrada-Jimenez sentence credit for 542 days, from December 5, 2005 until sentencing on June 1, 2007. The court denied Estrada-Jimenez's subsequent motion for an additional 188 days of sentence credit.

A defendant is entitled to sentence 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 may move for sentence credit at any time after sentencing. Sec. 973.155(5). In a motion for sentence credit, “[t]he law places the burden for demonstrating both custody and its ‘connection with the course of conduct for which sentence was imposed’ ... on the defendant” seeking sentence credit. *State v. Villalobos*, 196 Wis. 2d 141, 148, 537 N.W.2d 139 (Ct. App. 1995) (quoted source omitted). We independently review whether a defendant is entitled to additional sentence credit. *See State v. Seeley*, 212 Wis. 2d 75, 81, 567 N.W.2d 897 (Ct. App. 1997).

We conclude that Estrada-Jimenez has not met his burden to establish that he is entitled to an additional 188 days of sentence credit. Estrada-Jimenez argues that the circuit court should have looked to the sentencing court’s intent as to sentence credit in calculating the amount of sentence credit due. In support, Estrada-Jimenez relies on *State v. Brown*, 150 Wis. 2d 636, 443 N.W.2d 19 (Ct. App. 1989), for the proposition that the intent of the sentencing court controls the terms of the sentence. However, in *Brown*, we looked to the intent of the circuit court to resolve an ambiguity as to whether a sentence was imposed consecutively or concurrently to another sentence, which is part of the circuit court’s sentencing discretion. *See* WIS. STAT. § 973.15(2)(a). Here, the issue is not the terms of the sentence imposed as part of the circuit court’s sentencing discretion, but rather the amount of sentence credit due to Estrada-Jimenez as a matter of law. *See State v. Lange*, 2003 WI App 2, ¶41, 259 Wis. 2d 774, 656 N.W.2d 480 (sentence credit determinations are a question of law). The court’s intent as to how much sentence credit a defendant should receive is not relevant to that calculation, and Estrada-

Jimenez makes no argument that the record establishes that he is entitled to additional days of sentence credit.

Moreover, the record does not support Estrada-Jimenez's contention that the circuit court intended for Estrada-Jimenez to receive two years of sentence credit or that the court made Estrada-Jimenez eligible for supervised release after twenty-two years based on any expectation as to sentence credit. Rather, the sentencing court expressly stated that it believed that *more* than twenty years of confinement was necessary, and that it believed that twenty-two years was necessary for all of the reasons it stated on the record prior to addressing the issue of sentence credit. It was only after determining that twenty-two years was the necessary amount of confinement before Estrada-Jimenez would be eligible for extended supervision that the court turned to sentence credit, and then expressly stated that there was no computation of sentence credit before the court. Accordingly, the record does not support the claim that the court had any expectation as to sentence credit or that the court considered sentence credit in imposing Estrada-Jimenez's sentence.²

Finally, Estrada-Jimenez also appears to raise two arguments on appeal that he did not raise in the circuit court: (1) that his trial counsel was ineffective; and (2) that he is entitled to sentence modification based on a new factor, namely, that he is not entitled to two years of sentence credit. Because those issues were not raised in the circuit court, they are not properly

² To the extent that Estrada-Jimenez is arguing that there was a stipulation or other representation by the circuit court as to its expectation of sentence credit that was made off the record, we note that this court's review is limited to the facts in the record before us. *See Ryde v. Dane Cnty. DSS*, 76 Wis. 2d 558, 563, 251 N.W.2d 791 (1977).

raised on appeal.³ See *State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). We therefore do not address those issues further.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to 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

³ Additionally, Estrada-Jimenez clarifies in his reply brief that he is not arguing ineffective assistance of counsel in this appeal. As to Estrada-Jimenez’s sentence modification argument, that claim also fails on the merits based on our determination that the record does not support Estrada-Jimenez’s assertion that sentence credit was relevant to the circuit court’s sentencing determination. See *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (sentence modification motion must establish a “new factor,” that is, a fact or set of facts highly relevant to the imposition of sentence, but not known to the judge at the time of sentencing).