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DISTRICT I

May 16, 2023

To:

Hon. Cynthia Mae Davis
Circuit Court Judge
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

Hon. Michelle Ackerman Havas
Circuit Court Judge
Electronic Notice

Rodney Lewis Bowman Sr. 455194
Felmers O. Chaney Correctional Center
2825 N. 30th Street
Milwaukee, WI 53210

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

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

2022AP537	State of Wisconsin v. Rodney Lewis Bowman, Sr. (L.C. # 2017CF5023)
2022AP538	State of Wisconsin v. Rodney Lewis Bowman, Sr. (L.C. # 2018CF1532)

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

Rodney Lewis Bowman, Sr., *pro se*, appeals an order denying his motion to rescind his amended judgments of conviction, as well as an order denying his motion for reconsideration. He also argues that the trial court erred in 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 (2021-22).¹ We summarily affirm.

In July 2018, Bowman was convicted of one count of child abuse and one count of strangulation and, in a consolidated case, two counts of witness intimidation. The trial court stated that it was imposing four-year, evenly-bifurcated sentences for each count in both cases. In each case, the court indicated that the sentences were “to run concurrent to each other but consecutive to any other sentence.” The court then stated that “this does ultimately come out to ... an eight-year prison sentence.”

However, the judgments of conviction for these cases listed the sentences as running concurrent to each other. Upon review of the sentencing transcript, the Department of Corrections sent a letter to the trial court requesting clarification of the discrepancy between the transcript and the written judgments. The court subsequently entered an order amending the judgments to reflect the trial court’s intent that the sentences for the two counts in each case were to run concurrently, but that the sentences in the two cases were to run consecutively to each other and any other sentences.

Bowman filed a motion seeking to rescind the amended judgments of conviction. The trial court denied the motion, finding that the judgments were properly amended to reflect the court’s sentencing intent, noting that when there is a conflict between an oral pronouncement and a written judgment, the oral pronouncement controls. Bowman filed a motion for

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

reconsideration, which was denied.² Additionally, Bowman filed a separate motion seeking sentence credit. That motion was also denied on the grounds that Bowman had received the sentence credit that he was due; it was applied towards his reconfinement term from two previous cases, which he is serving consecutively to the sentences imposed in the two cases here. Bowman appeals.

“When an unambiguous oral pronouncement at sentencing conflicts with an equally unambiguous pronouncement in the judgment of conviction, the oral pronouncement controls.” *State v. Oglesby*, 2006 WI App 95, ¶16, 292 Wis. 2d 716, 715 N.W.2d 727. However, if an omission in the oral pronouncement could create an ambiguity, the appellate court, upon review, “look[s] to the record as a whole” to determine the trial court’s intent. *State v. Brown*, 150 Wis. 2d 636, 642, 443 N.W.2d 19 (Ct. App. 1989). Ultimately, “[t]he intent of the sentencing judge controls the determination of the terms of a sentence[.]” *Id.*

Here, the trial court did not expressly state that the sentences imposed in each of the cases here were to run consecutive to each other. However, the court did state that the sentences in those cases were to be consecutive to “any other sentence,” and that the total sentence being imposed for both cases was eight years. Furthermore, the court observed that “a consecutive prison sentence here is also appropriate given the seriousness of the offenses and the aggravating factors.” We therefore conclude that, based on the record as a whole, it was the intent of the trial court for the sentences imposed in these two cases to run consecutively. *See id.*

² Bowman was sentenced by the Honorable Cynthia M. Davis. His motion seeking to rescind the amended judgments of conviction, however, was before the Honorable Michelle Ackerman Havas. Judge Davis was then assigned Bowman’s motion for reconsideration; she confirmed that Judge Havas had correctly interpreted her sentencing intent in denying the motion to rescind the amended judgments.

Additionally, Bowman argues that the trial court erred in failing to grant his motion for sentence credit. “[T]ime in custody is to be credited to the sentence first imposed,” and may not be “duplicatively credited to more than one ... sentence[] imposed to run consecutively.” *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988). The record shows that Bowman received sentence credit toward his reconfinement term for his previous cases, and that his reconfinement term is being served consecutively with the sentences imposed in these cases. Therefore, Bowman has received the sentence credit to which he is due, and “dual credit is not permitted[.]” *See id.*

Accordingly, we affirm the trial court’s orders denying Bowman’s motion seeking to rescind his amended judgments of conviction, his motion for reconsideration, and his motion for sentence credit.

Upon the foregoing,

IT IS ORDERED that the orders 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