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DISTRICT I

May 16, 2023

To:

Hon. T. Christopher Dee
Circuit Court Judge
Electronic Notice

Jacob J. Wittwer
Electronic Notice

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

Ravon Martin Jr. 513555
New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2021AP1223-CR

State of Wisconsin v. Ravon Martin, Jr. (L.C. # 2015CF5404)

Before Donald, P.J., Dugan and White, 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).

Ravon Martin, Jr., a/k/a Ronnie Martin, *pro se*, appeals an order denying his motion for sentence modification, relating to his amended judgment of conviction in which his sentence credit was reduced. 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.

Martin was convicted in June 2019 of second-degree reckless injury using a dangerous weapon, for a shooting that occurred in July 2015. He was sentenced to six years and six months of initial confinement followed by three years of extended supervision, to be served consecutively to any other sentence. Additionally, Martin received 1,320 days of sentence credit.

Martin was taken into custody for this case on February 6, 2018, upon being released from prison after serving the confinement term from a previous case (2015CF3702). After his sentencing in this case, the Department of Corrections (DOC) filed a letter with the trial court indicating that the correct sentence credit for Martin was 528 days, based on his prison release date in February 2018 for that prior case. The trial court amended Martin's judgment of conviction accordingly.

Martin filed a letter seeking to rescind that amended judgment of conviction, which the trial court declined to do. Martin subsequently filed a motion for sentence modification, arguing that the trial court's sentencing intent was "disturbed because of this crediting oversight."² The trial court rejected his motion on the grounds that the sentence credit initially granted was not highly relevant to the sentence that was imposed, and therefore, Martin had not established a new factor for purposes of sentence modification. Martin appeals.

In order to prevail on a motion for sentence modification, a defendant must demonstrate both that a new factor exists and that the alleged new factor justifies sentence modification.

² Prior to filing his motion, Martin filed a second letter with the trial court seeking sentence modification based on the reduction of his sentence credit. The court construed this as a second request to rescind the amended judgment of conviction and reinstate his original sentence credit, and again denied the request.

State v. Harbor, 2011 WI 28, ¶38, 333 Wis. 2d 53, 797 N.W.2d 828. Whether the evidence presented by the defendant constitutes a new factor is a question of law that we review *de novo*. *Id.*, ¶33.

A new factor is defined as “a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties.” *Id.*, ¶40 (citation omitted). While the State concedes that the error in calculating sentence credit was not known at the time of sentencing, it argues that the initial sentence credit given was not highly relevant to the sentence imposed, and therefore, the new factor test has not been met.

We agree. The sentencing transcript reflects that the trial court considered proper factors for sentencing, such as the nature and gravity of the offense and the protection of the public, as well as Martin’s character and background, including his prior criminal record. *See State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. These were clearly the factors the court considered in fashioning Martin’s sentence; the sentence credit he was to receive was not discussed, outside of Martin’s counsel noting that it was a large amount of time. Therefore, we conclude that Martin has not established that his amended judgment of conviction reducing his sentence credit is a new factor for purposes of sentence modification. *See Harbor*, 333 Wis. 2d 53, ¶40.

Furthermore, the trial court correctly determined that Martin was only entitled to 528 days of sentence credit—from the time he was released in the previous until he was sentenced in this case. “[U]nless the acts for which the first and second sentences are imposed are truly related or identical, the sentencing on one charge severs the connection between the custody and

the pending charges.” *State v. Beets*, 124 Wis. 2d 372, 383, 369 N.W.2d 382 (1985). In other words, a defendant is not entitled to sentence credit “for custody that is being served in satisfaction of another unrelated criminal sentence.” *State v. Gavigan*, 122 Wis. 2d 389, 393, 362 N.W.2d 162 (Ct. App. 1984). The offense in this case is not related to Martin’s previous offense.

Additionally, given the consecutive structure of the sentence imposed in this case with Martin’s previous case, duplicative sentence credit may not be awarded. *See State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988). Therefore, the trial court properly amended Martin’s judgment of conviction based on DOC’s calculation.

Accordingly, we affirm the trial court’s order denying Martin’s motion for sentence modification.

Upon the foregoing,

IT IS ORDERED that the order is 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