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DISTRICT III

July 6, 2023

To:

Hon. Thomas J. Walsh
Circuit Court Judge
Electronic Notice

Jacob J. Wittwer
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

John J. Konaha 337560
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You are hereby notified that the Court has entered the following opinion and order:

2022AP61-CR

State of Wisconsin v. John J. Konaha (L. C. No. 1999CF1127)

Before Stark, P.J., Hruz and Gill, 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).

John Konaha, pro se, appeals from an order that denied his most recent postconviction motion seeking additional credit on the sentence imposed on his 2001 conviction for repeated sexual assault of a child.¹ Based upon our review of the briefs and record, we conclude at

¹ Konaha also raises a claim of ineffective assistance of counsel in his brief, which we will not address because it is raised for the first time on appeal. See *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶10-11, 261 Wis. 2d 769, 661 N.W.2d 476.

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).² We affirm.

On May 11, 2001, the circuit court sentenced Konaha to an indeterminate term of thirty-two years in prison on the sexual assault conviction, to be served consecutively to any other sentences Konaha was then serving. By stipulation of the parties, the court subsequently awarded Konaha 354 days of sentence credit to account for the period from May 22, 2000, (when Konaha’s bond was set) to the sentencing date. Konaha now seeks an additional 238 days of sentence credit, to account for the period from September 27, 1999, (the day that Konaha asserts he was arrested on the sexual assault charge) to May 21, 2000, (the day before his bond was set).

WISCONSIN STAT. § 973.155(1)(a) provides that an “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 [the] sentence was imposed.” An offender is entitled to credit for custody on a probation, supervision, parole, or bond hold on an otherwise unrelated case that is due, in whole or in part, to the conduct for which sentence is imposed. *See State v. Hintz*, 2007 WI App 113, ¶8, 300 Wis. 2d 583, 731 N.W.2d 646. However, sentence credit should not be granted for presentence time during which the defendant was actually serving another sentence for an unrelated crime. *State v. Beets*, 124 Wis. 2d 372, 385, 369 N.W.2d 382 (1985). We will independently review the application of the sentence credit statute to a particular set of facts. *State v. Kontny*, 2020 WI App 30, ¶6, 392 Wis. 2d 311, 943 N.W.2d 923.

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Konaha has not pointed to any documents in the record that verify his arrest date, or that show where and when he was in custody in relation to this case or other cases. We note that the complaint and arrest warrant were filed on December 1, 1999, which makes it improbable that Konaha was arrested on the sexual assault charge several months earlier, as he asserts.

It appears more likely that Konaha was subjected to a parole hold on another case as the result of his conduct in this case. According to the presentence investigation report (PSI), Konaha was on parole on Shawano County case No. 1997CF187 when a police report was filed regarding the sexual assault in this matter. Konaha was “taken into custody” the following day, on September 14, 1999. On December 7, 1999, Konaha’s parole was revoked on the Shawano County case, and he was returned to prison for an unspecified period of time. Konaha was also sentenced to serve a consecutive one-year prison sentence on another unrelated case, Brown County case No. 1997CT598. In addition, on March 2, 2001, Konaha was sentenced to an indeterminate ten-year sentence in Outagamie County case No. 1999CF732.

The PSI stated that Konaha was scheduled to be discharged from Shawano County case No. 1997CF187 on March 5, 2001, and from Brown County case No. 1997CT598 on September 4, 2001, but we are unable to determine from the record before us whether Konaha was in fact discharged on the anticipated dates. Konaha himself told the circuit court on February 10, 2000, that he was scheduled to be released from prison in about five months. Konaha told the court on May 22, 2000, that he had another sixty days to serve. In addition, a series of habeas corpus writs used to bring Konaha to court from the Dodge Correctional Institution and the Green Bay Correctional Institution for various court appearances confirm that Konaha was in prison, at the very least, between January 28, 2000, (when a writ was issued to

bring Konaha to his initial appearance) and December 20, 2000 (one of Konaha's previously scheduled trial dates).

Based upon the information in the PSI, Konaha's statements to the circuit court, and the habeas corpus writs, we conclude that Konaha has no claim to any sentence credit for the period between December 12, 1999, (the day when his parole was revoked on the Shawano County case) and May 21, 2000, (the day before his bond was set on this case) because the only reasonable inference from the information before us is that he was in prison, on an unrelated matter, during that entire time. It further appears from those sources that much of the 354 days of sentence credit awarded by the court was in error, because Konaha was serving several unrelated prison sentences during a substantial portion (if not all) of the time between May 22, 2000, and May 11, 2001.

The State informs us that it is not challenging the sentence credit already awarded, due to its prior stipulation. Nonetheless, even if we were to assume the facts most favorable to Konaha—i.e., that he was taken into custody on a parole hold on September 14, 1999, based upon his conduct in this case, and that he remained in custody on that parole hold up until the time he was sentenced following revocation on December 12, 1999—Konaha has not shown that the eighty-nine days of credit that he would have been erroneously denied would have exceeded the amount of credit that he was erroneously granted. We therefore conclude that the circuit court did not err in denying Konaha's motion for additional sentence credit. In light of our conclusion, we do not address the State's additional arguments that Konaha's current sentence credit claim is barred by his failure to exhaust administrative remedies or the forfeiture doctrine.

Therefore,

IT IS ORDERED that the postconviction order denying additional sentence credit is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals