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DISTRICT IV

August 29, 2024

To:

Hon. Jennifer Lee Day
Reserve Judge

Jacob J. Wittwer
Electronic Notice

Trisha Rowe
Clerk of Circuit Court
Lafayette County Courthouse
Electronic Notice

Teresa L. Johnson 270326
Robert Ellsworth Correctional Center
21425-A Spring St.
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1850-CR State of Wisconsin v. Teresa L. Johnson (L.C. # 2018CF44)

Before Graham, Nashold, and Taylor, 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).

Teresa Johnson appeals pro se from an amended judgment of conviction and a circuit court order disposing of motions for sentence credit and for postconviction relief under WIS. STAT. § 974.06 (2021-22).¹ Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We affirm in part and reverse in part, and we remand with directions that the circuit court amend the judgment of conviction to include thirteen days of additional sentence credit.

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

There is no dispute as to the following facts. Johnson was previously sentenced to federal prison in a federal criminal case. On June 10, 2020, the federal court ordered her released from that sentence. She was later convicted and sentenced in the case now before us. The circuit court granted her four days of sentence credit.

On appeal, Johnson argues that she is entitled to additional sentence credit. The State concedes that she is entitled to thirteen days of additional sentence credit from June 11, 2020, to June 23, 2020, during which time she was being held in custody in Illinois pursuant to a warrant issued in this case in 2018. We agree with the State that Johnson should receive additional sentence credit for these thirteen days.

Johnson argues that she is entitled to significantly more sentence credit, starting from the date that the warrant in this case was issued in 2018 through June 10, 2020, when she was released from federal custody. Although Johnson acknowledges that she was serving a federal sentence during that time period, she contends that, because she was subject to a warrant issued in this case, her federal case was “in connection with” the case before us. *See* WIS. STAT. § 973.155(1)(a) (“A convicted offender shall be given credit toward the service of [the offender’s] sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed.”).

We disagree. A defendant is not entitled to sentence credit for time spent serving a separate, unrelated sentence, and Johnson has not shown that her federal sentence was based on the same course of conduct for which she was sentenced here. *See State v. Beets*, 124 Wis. 2d 372, 383, 369 N.W.2d 382 (1985) (“[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.”); *see also State v. Carter*, 2010 WI 77, ¶56, 327 Wis. 2d 1, 785 N.W.2d 516 (“[I]t is the factual connection between custody and the conduct for which sentence is imposed that is controlling.”).

Moreover, even if Johnson’s two sentences had been related, her sentence here was imposed consecutive to her previously-served federal sentence. Accordingly, she cannot use her federal custody time as credit against her sentence here. *See State v. Boettcher*, 144 Wis. 2d 86, 100, 423 N.W.2d 533 (1988) (“The total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences.”).

Johnson raises other claims in this appeal, but we agree with the State that those claims are procedurally barred because Johnson has not shown a sufficient reason for failing to raise the claims in her original postconviction motion she filed in January 2022. *See WIS. STAT. § 974.06(4); State v. Romero-Georgana*, 2014 WI 83, ¶35, 360 Wis. 2d 522, 849 N.W.2d 668 (explaining that “if the defendant did file a motion under [WIS. STAT.] § 974.02 or a direct appeal or a previous motion under § 974.06, the defendant is barred from making a claim that could have been raised previously unless [the defendant] shows a sufficient reason for not making the claim earlier”); *see also generally State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

Therefore,

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed in part and reversed in part and that the cause is remanded with directions that the circuit court amend the judgment of conviction to include thirteen days of additional sentence credit. *See WIS. STAT. RULE 809.21(1)*.

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

Samuel A. Christensen
Clerk of Court of Appeals