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May 8, 2013

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

2012AP1915-CR

State of Wisconsin v. Gregory R. Schmitt (L.C. # 2003CF262)

Before Brown, C.J., Reilly and Gundrum, JJ.

Gregory Schmitt appeals pro se from a September 4, 2012 order denying his motion to reconsider a July 15, 2011 decision denying part of the sentence credit he requested. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12). We conclude that we lack jurisdiction over this appeal. The appeal is dismissed.

Schmitt was convicted in 2004 of operating while intoxicated (5th or greater). In July 2010, Schmitt moved the circuit court for 437 days of sentence credit. After a hearing, the circuit court

entered a memorandum decision on July 15, 2011, granting seventy-five days of sentence credit but denying 362 days of sentence credit.¹ In July 2012, Schmitt sought reconsideration because his original motion “failed to argue caselaw to support his request and he request time which was credited to another case, which was Dual Credit and is not allowed.” Schmitt then restated his arguments for sentence credit. The circuit court denied the motion because “[n]othing herein alters the findings and conclusions set forth in my initial decision on July 15, 2011.” The court further stated that Schmitt did not provide “additional insight or allegations supporting the sentence request.” Schmitt appeals.

An appeal cannot be taken from an order denying a motion for reconsideration which presents the same issues as those determined in the order sought to be reconsidered. *See Silverton Enters., Inc. v. General Cas. Co. of Wis.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a motion for reconsideration not be used to extend the time to appeal from an order when that time has expired. *Id.*; *see also Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972). We ordered the parties to address our jurisdiction as the first issue in their appellate briefs. Schmitt argues that we have jurisdiction; the State disagrees.

The record shows that a final order was entered on July 15, 2011, denying in part and granting in part Schmitt’s motion for sentence credit. Schmitt did not appeal. Schmitt’s reconsideration motion presented an issue previously determined by the July 15, 2011 order: whether Schmitt was entitled to sentence credit for his Earned Release Program participation.

¹ The July 15, 2011 circuit court decision both granted and denied sentence credit. The decision disposed of the entire matter in litigation, rendering it a final, appealable disposition. *Wambolt v. West Bend Mut. Ins. Co.*, 2007 WI 35, ¶39, 299 Wis. 2d 723, 728 N.W.2d 670.

Silverton and *Ver Hagen* apply. We lack jurisdiction to review the September 4, 2012 order denying reconsideration.²

Upon the foregoing reasons,

IT IS ORDERED that this appeal is dismissed for lack of jurisdiction.

Diane M. Fremgen
Clerk of Court of Appeals

² To the extent we have not addressed an argument raised on appeal, the argument is deemed rejected. *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).