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June 25, 2013

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

2012AP1368-CR	State of Wisconsin v. Terrence A. Buchanan (L.C. # 2005CF2207)
2012AP1369-CR	State of Wisconsin v. Terrence A. Buchanan (L.C. # 2007CF422)
2012AP1370-CR	State of Wisconsin v. Terrence A. Buchanan (L.C. # 2007CF443)

Before Lundsten, P.J., Higginbotham and Kloppenburg, JJ.

Terrence Buchanan appeals orders that denied his motions for additional sentence credit and reconsideration relating to Dane County Case Nos. 2005CF2207, 2007CF422, and 2007CF443. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ For the reasons

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

discussed below, we modify the circuit court's decision to correct a numerical miscalculation and, as modified, affirm.

On May 9, 2006, the circuit court sentenced Buchanan to three concurrent terms of probation on Counts 2, 5, and 6 of 2005CF2207, and imposed consecutive periods of conditional jail time on Counts 2 and 6. The court withheld adjudication on Count 1, and awarded 45 days of sentence credit to be applied to the conditional jail time on Count 2 for the period while Buchanan was awaiting sentencing on all four counts between March 25, 2006, and May 9, 2006.

On July 27, 2007, following the revocation of Buchanan's probation on 2005CF2207 and his conviction on two new cases, 2007CF422 and 2007CF443, the circuit court sentenced Buchanan to consecutive jail terms totaling ten months on Counts 2, 5, and 6 of 2005CF2207, and to concurrent probation terms on Count 1 of 2005CF2207 and the new counts in 2007CF422 and 2007CF443. The court accepted the parties' representation that Buchanan was by then due 315 days of sentence credit on 2005CF2207, which included the overlapping time that he spent in custody both on a probation hold for 2005CF2207 and awaiting sentencing in 2007CF422 and 2007CF443. The court applied 270 of the 315 days that had been accumulated by July 27, 2007, to Counts 2, 5, and 6 of 2005CF2207 to result in time served on the cumulative ten-month jail sentences, leaving 45 days of credit remaining to be applied to Count 1 of 2005CF2207, 2007CF422, and/or 2007CF443 in the event of revocation on any of those counts.

On September 8, 2009, following the revocation of Buchanan's probation on 2007CF443, the court sentenced Buchanan to eight months in jail on two counts in that case, to be served concurrent with each other but consecutive to any other sentences. The court awarded Buchanan

108 days of sentence credit, which included the leftover 45 days from the sentence credit that had been awarded at the July 27, 2007 sentencing hearing, plus time spent on probation holds related to both 2007CF422 and 2007CF443 from September 29, 2007, to November 20, 2007, and from March 31, 2009, to April 10, 2009.

On July 15, 2011, following the revocation of Buchanan's probation on Count 1 of 2005CF2207 and 2007CF422, the court imposed concurrent prison terms without granting any additional sentence credit. However, in response to the postconviction motion that is the subject of this appeal, the circuit court amended the judgment of conviction for 2005CF2207 to add an additional 27 days of sentence credit for the time Buchanan spent in custody prior to the entry of his plea between September 27, 2005, and October 25, 2005.

On this appeal, Buchanan seeks additional sentence credit on Count 1 of 2005CF2207 for the 28 days from September 27, 2005, to October 25, 2005; 89 days from March 25, 2006, to June 22, 2006; 10 days from October 1, 2006, to October 6, 2006, and from January 27, 2007, to February 1, 2007; and 300 days for the jail terms that were ordered on July 27, 2007. In addition, Buchanan seeks to have 151 days of credit applied to both Count 1 of 2005CF2207 and 2007CF422 for the period between February 26, 2007, and July 27, 2007, and to have 147 days of credit on 2007CF443 for the overlapping period from March 2, 2007, to July 27, 2007.² Finally, Buchanan seeks to have another 45 days of credit applied to 2007CF443 for the period from September 29, 2007, to November 13, 2007.

² We need not address the period from March 2, 2007, to July 27, 2007, because this period is not before us. Nonetheless, we note that, as to that time period, the analysis would be the same as for the period from February 26, 2007, to July 27, 2007.

As to the period between September 27, 2005, and October 25, 2005, we note that the circuit court has already determined that Buchanan is entitled to credit for that time, and the State does not dispute that finding. However, we calculate the number of days in that period to have been 28, rather than 27. We will therefore modify the circuit court's order to add one additional day of credit.

As to the period from March 25, 2006, to June 22, 2006, Buchanan already received 45 days of credit for the period between March 25, 2006, to May 9, 2006, which was applied to his conditional jail time on Count 2 of 2005CF2207. He is not entitled to dual credit on his subsequently imposed, consecutive sentence on Count 1. Furthermore, as of May 9, 2006, Buchanan began serving his conditional jail time on Count 2. Therefore, he was no longer in custody with respect to Count 1 for sentence credit purposes between May 9, 2006, and June 22, 2006, and is not entitled to have any credit for those days applied to Count 1.

As to the 10 days from October 1, 2006, to October 6, 2006, and from January 27, 2007, to February 1, 2007, both of those periods were included under the heading "jail credit due" on the revocation summary for 2005CF2207 used by the court at the sentencing hearing held on July 27, 2007. Although neither of the parties has provided us with a breakdown of the 315 days of sentence credit the circuit court awarded Buchanan at that time, Buchanan has not explained—and our review of the record does not reveal—what periods of time that 315 days of credit would cover if not those identified on the revocation summary. We therefore agree with the State that it appears Buchanan was already given credit for those 10 days, applied to Counts 2, 5, and 6 of 2005CF2207. Again, he is not entitled to dual credit on his subsequently imposed, consecutive sentence on Count 1.

The same analysis applies to the period between February 26, 2007, and July 27, 2007, when Buchanan was in custody both for a probation hold on 2005CF2207 and awaiting trial on 2007CF422 and 2007CF443. The 315 days of credit the circuit court awarded on July 27, 2007—which resulted in time served on the ten-month jail terms imposed on Counts 2, 5, and 6 of 2005CF2207—included all but the last 45 days of that period. Buchanan was subsequently granted credit for the remaining 45 days against the eight-month jail term imposed on September 8, 2009, on 2007CF443. Therefore, Buchanan has already received credit for the entire period and is not entitled to any additional credit on his subsequently imposed, consecutive sentences on Count 1 of 2005CF2207 and 2007CF422.

Buchanan’s claim for an additional 300 days of credit for the ten-month sentences he received on July 27, 2007, is entirely without merit because he never spent any additional days in custody for those sentences—those sentences were discharged as having been served after applying his sentence credit.

As to the 45-day period from September 29, 2007, to November 13, 2007, those dates are listed on the revocation summary that was before the court on July 15, 2011, when it imposed sentence on 2007CF422. We therefore agree with the State that those days were included in the 108 days of sentence credit awarded at that time.

In sum, Buchanan has not shown any dates that he was in custody for which he has not already received credit, aside from the one-day miscalculation of the length of his initial detention for 2005CF2207. Accordingly,

IT IS ORDERED that the post-revocation judgment of conviction for 2005CF2207 shall be amended to show 28, rather than 27, days of sentence credit.

IT IS FURTHER ORDERED that the postconviction orders denying additional sentence credit and reconsideration are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals