

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 8, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2007AP1336-CR
2007AP1337-CR
2007AP1338-CR**

**Cir. Ct. No. 2001CM4268
2004CF1930
2005CF2304**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAWRENCE GRIFFIN, JR.,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
MEL FLANAGAN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Lawrence Griffin, Jr., appeals *pro se* from circuit court orders denying his motion for sentence credit and requests for

reconsideration. The circuit court denied the motions because Griffin did not meet the criteria for sentence credit established in WIS. STAT. § 973.155(1)(a) (2005-06).¹ Because Griffin failed to demonstrate that he was entitled to sentence credit, we affirm the circuit court's orders.

¶2 Griffin's appeal No. 2007AP1336-CR arises from two crimes to which Griffin pled guilty in 2001. On the first count, he received a six-month jail sentence and on the second count, he received a two-year prison sentence. A third count was dismissed and "read in" at sentencing. In 2007, Griffin sought sentence credit, which was denied because the sentence on that case had expired.

¶3 Relative to appeal No. 2007AP1337-CR, Griffin was convicted in October 2004. He received a forty-two-month prison sentence, of which a minimum of eighteen months was to be in initial confinement. He received no sentence credit. The circuit court stayed the sentence, however, and imposed a two-year period of probation. The circuit court initially denied Griffin sentence credit for time spent in custody, but, upon Griffin's motion, the circuit court granted Griffin eight days of credit.

¶4 In the third appeal, Griffin had been convicted in 2006 of two crimes and had been sentenced to a total of six years, nine months' incarceration, each consecutive to all other sentences, with Griffin to serve a minimum of three years in initial confinement. The circuit court denied Griffin's request for sentence credit.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶5 Griffin’s motion for sentence credit related to his convictions in 2004 and 2006.² He argued that his sentences in those cases should be adjusted under WIS. STAT. § 973.195 because of his good conduct and progress toward rehabilitation while incarcerated. The district attorney objected to the request, and the circuit court, after reviewing records associated with Griffin’s incarceration, concluded that conduct reports Griffin accrued while incarcerated indicated that sentence adjustment was not appropriate. The circuit court further concluded that the “full time designated for initial confinement at sentencing is necessary to punish and deter the defendant, especially under circumstances where the defendant was given an opportunity to conform his conduct on probation.” On appeal, Griffin does not challenge this determination by the circuit court, and we will not consider it further.

¶6 Griffin then sought sentence credit several more times, each time arguing that he should be granted sentence credit for time he spent on probation or extended supervision in the 2004 and 2006 cases. This remains Griffin’s position on appeal, as he argues that the “fact” that he was required to remain in Wisconsin “while on probation or parole,” means that he was in constructive custody and therefore subject to prosecution for escape. *See State v. Magnuson*, 2000 WI 19, ¶31, 233 Wis. 2d 40, 606 N.W.2d 536 (“[F]or purposes of sentence credit an

² Although Griffin also appeals the circuit court’s rulings as they relate to his 2001 convictions, there is no real dispute but that Griffin had completed his sentences for that case prior to filing the motions that are the subject of this appeal. To be eligible for sentence credit, the credit sought must be “for all days spent in custody in connection with the course of conduct for which sentence was imposed.” WIS. STAT. § 973.155(1)(a). Because Griffin’s sentences in that case had expired, he could no longer seek sentence credit relative to that case.

offender's status constitutes custody whenever the offender is subject to an escape charge for leaving that status").

¶7 The circuit court rejected Griffin's argument, as do we. WISCONSIN STAT. § 946.42(1)(b) defines escape to mean leaving custody "in any manner without lawful permission or authority." The legislature has, however, defined custody for purposes of an escape charge to exclude "the custody of a probationer, parolee, or person on extended supervision by the department of corrections ... unless the person is in actual custody or is subject to a confinement order under s. 973.09(4)." See § 946.42(1)(a). Thus, to the extent Griffin is arguing that he should be granted credit for time spent on probation, parole, or extended supervision, he was not entitled to credit because he was not "subject to an escape charge for leaving that status." See *Magnuson*, 233 Wis. 2d 40, ¶31. Because Griffin has not demonstrated that he was denied sentence credit to which he was entitled, we affirm the circuit court's orders.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

