

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 8, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-0512

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ROBERT GAREL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
DANIEL R. MOESER, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Vergeront, JJ.

PER CURIAM. Robert Garel appeals from an order which denied his postconviction motion for sentence credit. Upon reviewing the record and the briefs we conclude that Garel has already been granted all of the sentence credit he is due. Accordingly, the order is affirmed.

BACKGROUND

On May 10, 1991, Garel received a seven-year sentence, with 549 days credit, on case no. 85-CF-469 (an armed robbery case). Garel was paroled on April 15, 1992, after serving two years, five months and fourteen days of his sentence. Garel subsequently violated the terms of his parole in the armed robbery case by committing the offenses underlying case no. 92-CF-1407 (a forged checks case). On November 2, 1992, Garel agreed to placement in the Department of Intensive Sanctions (DIS) as an alternative to the revocation (ATR) of his parole on the armed robbery case. On November 19, 1992 and January 15, 1993,¹ Garel was sentenced to four five-year terms of probation on the forged checks case. The forgery sentences were to run concurrently with each other and consecutively to the armed robbery sentence.

Garel was in DIS custody, first at Dodge and then on an electronic monitoring bracelet, from November 23, 1992 until February 1, 1993, when he escaped from home supervision. He was returned to custody on February 6, 1993, but escaped again on April 6, 1993. He was apprehended a second time on April 13, 1993, and held in custody pending the revocation of his parole on the armed robbery case and his probation on the forged check case, but the revocations were later vacated, so Garel was released back on parole on March 11, 1994. He signed another ATR agreement for the armed robbery case which placed him in the DIS program on April 12, 1994, and he remained under DIS supervision until September 6, 1994, when he was again incarcerated pending the

¹ The court initially sentenced Garel to three terms of probation and one term of DIS placement, but the DIS placement was later vacated.

revocation of his parole and probation following yet another escape on August 29, 1998.

An administrative order revoking Garel's parole and probation was signed on January 5, 1995. The order directed that Garel was to serve another two years and seven months in prison on the armed robbery case, and two years and eight months on the forged checks case. The order also noted that Garel was to receive one year, nine months and thirteen days of sentence credit for the period between November 23, 1992 and September 6, 1994, when he was in and out of DIS custody.

A DOC registrar calculated that Garel had already been granted credit for one year and eight months of the DIS custody time, because the figure in the revocation order of two years and seven months remaining to be served on the armed robbery conviction reflected a calculation of four years, four months and twenty-four days already served. Garel was therefore granted an additional month and thirteen days of credit.

STANDARD OF REVIEW

Assuming that there is no factual dispute over the dates on which an offender was in custody, the determination of the appropriate amount of sentence credit is a question of law which we review de novo. *State v. Abbott*, 207 Wis.2d 624, 628, 558 N.W.2d 927, 928 (Ct. App. 1996).

ANALYSIS

Section 973.155(1)(a), STATS., 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."

Case law establishes that sentence credit “should be applied in a mathematically linear fashion. The total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences,” starting with the first-imposed sentence. *State v. Boettcher*, 144 Wis.2d 86, 100, 423 N.W.2d 533, 539 (1988). Time spent in custody under the DIS program should be considered only in connection with the original conviction, regardless of any impact a subsequent offense may have had on the imposition of DIS sanctions. *Abbott*, 207 Wis.2d at 630, 558 N.W.2d at 929.

Garel contends that he is entitled to an additional one year and eight months of sentence credit against his sentences on the forged checks case because the registrar only gave him one month and thirteen days credit for the time he spent in DIS custody between November 23, 1992 and September 6, 1994. The record does not support Garel’s view. In essence, Garel wants the credit that he was granted in the revocation order to reduce his sentence on the armed robbery case by an amount in excess of the time he actually served. That is plainly contrary to the mandate of § 973.155(1)(a), STATS. Garel served no more than his seven-year sentence on the armed robbery case and is not entitled to have dual credit for any of that time served applied to his consecutively imposed sentences on the forged checks case.

There is no merit to Garel’s contention that his DIS placement on the armed robbery case served as a condition of probation for the forged checks case. The record shows that the DIS placement simply ran concurrently with the probation. *See* Section 973.15(2)(b), STATS. Nothing in § 301.048(2), STATS., prohibits such a disposition.

Nor are we persuaded by Garel's argument that the registrar somehow violated his rights by calculating that he had already been given credit for the time spent in DIS custody before the revocation order formalized the sentence credit. Under WIS. ADM. CODE § DOC 331.14(2)(a), the registrar is *required* "to provide the amount of time remaining on the client's sentence, which is the entire sentence less time served in custody prior to release to field supervision." The registrar properly calculated that Garel had two years, seven months and six days remaining on his sentence by taking into account the time which Garel had served in DIS custody relating to his conviction for armed robbery.

By the Court.—Order affirmed.

This opinion will not be published in the official reports. *See* RULE 809.23(1)(b)5, STATS.

