

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 9, 1999

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. **99-0986-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNETH R. SYKES, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Outagamie County: DENNIS C. LUEBKE, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Kenneth Sykes appeals his eighteen-month sentence and two-year consecutive sentence for fleeing an officer, jumping bail, and violating a harassment order. At sentencing, the trial court asked the parties to furnish information in writing on Sykes' sentence credit. Sykes and the

prosecution furnished the trial court conflicting tallies of time served. The trial court entered judgment giving Sykes the 408 days' sentence credit he sought. The prosecution then objected, and the trial court held a hearing. After the hearing, the trial court reduced its original 408 days' sentence credit to 226 days' credit. According to Sykes, this reduction violated the double jeopardy and due process clauses in that he had begun to serve his sentence and had valid expectations in its finality. We reject these arguments and affirm the 226 days' sentence credit.

¶2 Sykes correctly points out that the double jeopardy and due process clauses protect prisoners' expectations in the finality of sentences. *See United States v. DiFrancesco*, 449 U.S. 117, 136 (1980) (double jeopardy—legitimate expectations of finality); *United States v. Lundien*, 769 F.2d 981, 987 (4th Cir. 1985) (due process—crystallized expectations of finality). These provisions bar trial courts from changing sentences in which prisoners have acquired expectations of finality. Here, however, the trial court did not violate Sykes' due process or double jeopardy rights. The correction of Sykes' sentence credit was not a change in the sentence itself. The trial court did not change the intrinsic punishment for the crimes, it left Sykes' eighteen-month and two-year consecutive sentence undisturbed. The trial court simply recalculated the set-off arising from time served against the sentence. The tally and set-off of time served are matters extrinsic to the sentence itself. Because Sykes had no valid expectation of finality in matters extrinsic to the sentence, the double jeopardy and due process clauses do not apply.

By the Court.—Judgment and order affirmed.

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

