

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 28, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-0542-CR
00-0543-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MICHAEL P. D'ANGELO,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Dane County: MARYANN SUMI, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Eich, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Michael D'Angelo appeals judgments convicting him of second-degree recklessly endangering safety and bail jumping. He also

appeals an order denying postconviction relief. In each case, sentence was imposed and judgment entered after the Department of Corrections (DOC) had revoked D'Angelo's probation. He received consecutive prison terms for these two offenses, concurrent to a sentence imposed in federal court for unrelated crimes. The issues are (1) whether the probation revocation was invalid, thereby rendering the sentences and judgments invalid as well, and (2) whether D'Angelo received all of the sentence credit to which he was entitled. We conclude that D'Angelo forfeited his right to challenge the revocation decision, and that he is entitled to additional sentence credit. We therefore affirm in part, reverse in part, and remand for entry of an amended judgment awarding additional sentence credit.

¶2 On February 24, 1998, D'Angelo was arrested on federal charges and placed in federal custody in Wisconsin. On March 11, the DOC imposed a probation hold on D'Angelo for violations unrelated to the federal charges. On July 21, 1998, D'Angelo was convicted in federal court and began serving a prison term on that conviction.

¶3 Meanwhile, the DOC commenced revocation proceedings. D'Angelo requested public defender representation but was found to be financially ineligible. D'Angelo sought review of that determination in the trial court, but the trial court refused to consider the matter. Consequently, D'Angelo was not represented during the revocation proceedings.

¶4 At sentencing after revocation, the parties announced a joint sentencing agreement. D'Angelo's counsel in the matter stated that in view of the agreement, the controversy over D'Angelo's representation in the revocation proceeding was moot. The court sentenced D'Angelo as the parties

recommended, and he received consecutive prison sentences concurrent with the federal sentence he was already serving. He received sentence credit against the first of his consecutive sentences for the ninety days he had spent in jail as a condition of his original probation.

¶5 In a postconviction motion, D'Angelo claimed that the absence of representation in the revocation proceeding rendered the revocation and the subsequent criminal proceedings invalid. He also claimed sentence credit for March 11 through July 21, 1998, while he was on the probation hold but not yet sentenced on the federal offense. The trial court denied relief on both claims, resulting in this appeal.

¶6 D'Angelo cannot now challenge his revocation. At the sentencing hearing after revocation, D'Angelo's counsel informed the court that the sentencing agreement rendered moot the issue whether the absence of counsel in the revocation proceeding invalidated the subsequent criminal proceeding.¹ D'Angelo thus abandoned the issue and invited the court to proceed to the imposition of sentences and entry of judgments of conviction. We do not review alleged errors that were invited by the appellant. *See Shawn B.N.*, 173 Wis. 2d 343, 372, 497 N.W.2d 141 (Ct. App. 1992).

¶7 We conclude, however, that D'Angelo is entitled to additional sentence credit. WISCONSIN STAT. § 973.155(1)(b) (1997-98)² provides that a

¹ Defense counsel's statement was as follows: "I wanted to take a closer like [sic] at the circumstances under which he was revoked without a lawyer and I have sent for the tapes of that hearing, but I think our agreement here today and the disposition, I hope the Court goes along with that, will make that matter mute [sic]."

² All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

defendant shall be given credit for custody “which is in whole or in part the result of a probation ... hold ... placed upon the person for the same course of conduct as that resulting in the new conviction.” D’Angelo was in custody between March 11 and July 21, 1998, both because he could not post bail on his federal charges and because he was under a probation hold. Had he been able to post the federal cash bail after March 11, he would have remained in custody on the probation hold, although under state rather than federal jurisdiction. He was therefore in custody “in part” because of the probation hold. On remand, an amended judgment of conviction should be entered, awarding additional sentence credit for the period between March 11 and July 21, 1998. This credit should be awarded against the first of his consecutive sentences, the recklessly endangering safety conviction.

By the Court.—Judgments and order affirmed in part; reversed in part and cause remanded with directions.

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

