

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 2005

Cornelia G. Clark
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. 2005AP857-CR

Cir. Ct. No. 2003CF75

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNY MCDANIEL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Lincoln County: GLENN R. HARTLEY, Judge. *Affirmed.*

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

¶1 HOOVER, P.J. Kenny McDaniel appeals an order denying his motion for sentence modification. McDaniel contends he is entitled to 127 days' sentence credit for time spent in custody at Lincoln Hills School while awaiting sentencing in this case. McDaniel has failed to show he was in custody "in

connection with” the underlying felony here. Accordingly, we affirm the judgment and order.

¶2 McDaniel was confined to Lincoln Hills following juvenile delinquency adjudications for a series of offenses. On March 10, 2003, McDaniel was charged as an adult with one count of assault by a prisoner and one count of battery by a prisoner for actions he committed against Lincoln Hills employees in December 2002.

¶3 On July 23, 2003, McDaniel made his initial appearance. He was released to Lincoln Hills on a signature bond with the condition that, should he be released from Lincoln Hills, the bond would convert to a \$10,000 cash bond.

¶4 On August 12, 2003, McDaniel pled guilty to the assault. He was returned to Lincoln Hills pending sentencing. On November 26, 2003, the court sentenced him to ten years’ imprisonment, consisting of four years’ initial confinement and six years’ extended supervision. This sentence was ultimately amended to six years’ imprisonment, consisting of two years’ initial confinement and four years’ extended supervision.

¶5 McDaniel requested 127 days’ credit for the time between his initial appearance on July 23 and his sentencing on November 26. The court denied the motion, determining McDaniel had not been “in custody in connection with the course of conduct for which sentence was imposed.” WIS. STAT. § 973.155(1)(a).¹ McDaniel appeals.

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶6 WISCONSIN STAT. § 973.155(1)(a) provides that “[a] convicted 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 sentence was imposed.” A defendant seeking sentence credit has the burden to demonstrate that he or she was in custody and that the custody was in connection with the conduct for which the defendant was ultimately sentenced. *See State v. Villalobos*, 196 Wis. 2d 141, 148, 537 N.W.2d 139 (Ct. App. 1995). Under *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985), a defendant is not entitled to credit for pre-sentence custody if that custody is simultaneously satisfying a different sentence. *See State v. Thompson*, 225 Wis. 2d 578, 583, 593 N.W.2d 875 (Ct. App. 1999).

¶7 The parties agree that McDaniel was in custody between July 23 and November 26. McDaniel asserts, however, that he was not satisfying a sentence, so the *Beets* rule does not apply. His argument is, in essence, that a sentence can only be imposed for a conviction and by statute, a conviction does not include juvenile delinquency adjudications. *Thompson*, 225 Wis. 2d at 583.

¶8 We conclude, however, that McDaniel fails to show his custody was “in connection with the course of conduct for which sentence was imposed.” McDaniel conceded that, had the adult felonies never been charged, he would still have been confined from July 23 to November 26 to Lincoln Hills for the juvenile adjudications. As such, for the purposes of sentence credit, we are unconvinced McDaniel spent that time in custody in connection with the felonies.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

