

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 4, 2010

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. 2009AP215-CR

Cir. Ct. No. 2005CF1719

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW ALLEN,

DEFENDANT-APPELLANT.

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

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Matthew Allen appeals a postconviction order denying his motion for sentence credit. We affirm for the reasons discussed below.

BACKGROUND

¶2 The judgment of conviction in the present case, Dane County Case No. 2005CF1719, is based on twenty-three acts of forgery that Allen committed between March 21 and May 14, 2005. The State filed a criminal complaint on August 3, 2005, and the court released Allen on a signature bond that same day. The bond was revoked on September 8, 2006, after a jury found Allen guilty on all counts. On November 13, 2006, the court imposed consecutive terms of twelve months of initial incarceration and three months of extended supervision on each of the first ten counts, with concurrent twenty-year terms of probation on the remaining counts. The court awarded Allen sixty-six days of sentence credit on the first count for the time he spent in custody between the verdict and the sentencing.

¶3 Meanwhile, Allen was also placed on an extended supervision hold in Grant County Case No. 2000CF45 on August 1, 2005, presumably as a result of the course of conduct underlying the present case. Allen continued to be held in custody on the Grant County case until September 8, 2006, when he was sentenced after revocation to 414 days that had already been served.

¶4 Allen now seeks to have credit for most of the time he spent in custody on the extended supervision hold in the Grant County case (i.e., from August 1, 2005, to September 8, 2006) applied to his sentence in this case.

STANDARD OF REVIEW

¶5 We will independently review the application of the sentence credit statute to a certain set of facts. *State v. Abbott*, 207 Wis. 2d 624, 628, 558 N.W.2d 927 (Ct. App. 1996).

DISCUSSION

¶6 WISCONSIN STAT. § 973.155(1)(a) (2007-08)¹ 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 sentence was imposed.” A sentencing court has the authority to determine whether a new sentence will be served concurrently or consecutively to a contemporaneous or prior sentence. WIS. STAT. § 973.15(2)(a). Sentence credit which is due on one sentence should be applied to all other concurrent sentences contemporaneously imposed for the same course of conduct. *State v. Ward*, 153 Wis. 2d 743, 746, 452 N.W.2d 158 (Ct. App. 1989). However, sentence credit should not be granted for presentence time during which the defendant was serving another sentence for an unrelated crime. *State v. Amos*, 153 Wis. 2d 257, 280-81, 450 N.W.2d 503 (Ct. App. 1989).

¶7 Allen acknowledges that the circuit court imposed the sentences in this case consecutive to any other sentences that had been previously imposed. He argues, however, that his extended supervision hold on the Grant County case was not really a “sentence,” and therefore that the sentences in this case could not actually have been consecutive to the extended supervision hold. Therefore, he reasons, credit for the time he spent in custody should be applied to this case.

¶8 Allen’s argument is flawed in multiple respects. First of all, the relevant date of Allen’s sentencing in the Grant County case is November 8, 2000, when the court initially imposed a bifurcated sentence on Allen. By definition,

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

that sentence included both periods of initial confinement and extended supervision. *See generally* WIS. STAT. § 973.01(2). Therefore, Allen was in fact serving a “sentence” on the Grant County case while he was still on extended supervision, regardless whether he was being held in custody on an extended supervision hold, and it was proper for a subsequent court to impose another sentence consecutive to that sentence.

¶9 Secondly, even if the sentence credit statute could be construed to allow subsequent sentences to be imposed consecutive only to previously imposed periods of confinement, rather than extended supervision, the Grant County Circuit Court issued its reconfinement order on September 8, 2006, two months before the Dane County Circuit Court imposed the sentences in this case. Thus, by the time the consecutive sentences were imposed in this case, the days between August 1, 2005, and September 8, 2006, had already been credited on the Grant County case as actual confinement time served, not merely extended supervision time.

¶10 Third, even if the sentence credit statute could be interpreted to allow subsequent sentences to be imposed consecutive only to initial periods of confinement, and not periods of reconfinement, the sentences in this case were still not “contemporaneously imposed” to the Grant County case, on which periods of initial confinement and reconfinement had already been served.

¶11 Finally, the time Allen spent in custody on the extended supervision hold in the Grant County case was not time spent in custody in connection with this case, because he was on release on signature bond in this case throughout the duration of the extended supervision hold. In sum, the sixty-six days the circuit

court had already awarded Allen for this case on the original judgment of conviction was all the sentence credit to which he was entitled.

By the Court.—Order affirmed.

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

