

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 22, 2009

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. 2009AP574-CR

Cir. Ct. No. 2006CF883

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GERALD J. LADUE, JR.,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Winnebago County:
THOMAS J. GRITTON, Judge. *Affirmed.*

¶1 ANDERSON, P.J.¹ Gerald J. LaDue, Jr., claims that the circuit court must calculate and insert on a judgment of conviction the potential good

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

time he would earn on a jail sentence that he is serving in prison. We reject his claim because the statute contemplates that he must work for good time by following all of the jail's rules. In addition, a prisoner serving mixed felony and misdemeanor sentences in a prison is not eligible to earn "good time" on the misdemeanor sentences. Therefore, we affirm.

¶2 LaDue entered no contest pleas to one count of disorderly conduct as a repeater and one count of resisting or obstructing an officer as a repeater. An amended judgment of conviction identified both counts as misdemeanors and reflected that the circuit court imposed two six-month jail sentences, concurrent to each other but consecutive to any other sentence.² In addition, the circuit court authorized LaDue to serve the jail sentences in a state prison, authorized good time and gave him forty-nine days credit for time served.

¶3 LaDue filed a postconviction motion seeking to have "the good time to be put on the judgment of conviction, separate from the sentence credit. So the prison system will not think I'm getting dual credit." He also wanted the court to add together the good time and insert it at the foot of the judgment of conviction. The circuit court denied his motion and he appeals pro se.

¶4 The thesis of LaDue's argument is that WIS. STAT. §§ 302.43, 973.03(3)(a), 973.03(4)(b) and 973.155(4) "imply that the courts shall add good time credit in with [the] sentence credit at the time sentence was imposed." This argument requires us to engage in statutory interpretation, which we review de

² At the time he was sentenced in this case, August 22, 2007, he was serving a term of imprisonment imposed in Outagamie county on June 5, 2007. <http://wcca.wicourts.gov> (click "I agree"; enter "Outagamie" for the county and case No. 2006CF569; click "View Case Details"; follow hyperlink to history and details of charges and sentences) (last visited June 19, 2009).

novo. *Hometown Bank v. Acuity Ins.*, 2008 WI App 48, ¶7, 308 Wis. 2d 503, 748 N.W.2d 203.

¶5 Our analysis requires that we interpret four unambiguous and unconnected statutes. We begin with WIS. STAT. § 302.43, which provides that an inmate serving a sentence in a county jail “is eligible to earn good time in the amount of one-fourth of his or her term for good behavior.” The operable terms are “earn” and “good behavior.” Because “earn” is not defined in the statutes, we will turn to a dictionary. “Earn” is defined as “to receive as return for effort and esp. for work done or services rendered,” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 362 (10th ed. 1997). “Good behavior” is defined in § 302.43 as not “violate[ing] any law or any regulation of the jail, or neglect[ing] or refus[ing] to perform any duty lawfully required of him or her.”

¶6 Putting these definitions together leads us to reasonably conclude that a prisoner confined to a county jail does not get “good time” upfront; on the day he is booked into the county jail, he does not get an entry in his records with the “good time” commensurate with his sentence. He receives “good time” in return for exemplary conduct while in the jail. “‘Good time’ is a means, built into the system by the legislature, for providing an incentive for good conduct to jailed defendants.” *State v. Kluck*, 210 Wis. 2d 1, 10, 563 N.W.2d 468 (1997). There is no incentive if the prisoner gets the “good time” on the first day of the sentence. Because a circuit court is not clairvoyant, it cannot divine that the prisoner will engage in exemplary conduct for his entire sentence and be awarded a specific number of days as “good time”; therefore, the court properly denied LaDue’s

request that it put a specific number of days of “good time” on the judgment of conviction.³

¶7 The next statute LaDue relies upon is WIS. STAT. § 973.03(3)(a), which provides a formula for awarding “good time” if a person is required to perform community service work while serving a term of imprisonment in a jail. There is nothing in this statute “implying”—to use LaDue’s phrase—that a judgment of conviction must add “good time” credit in with sentence credit.

¶8 The third statute LaDue points to is WIS. STAT. § 973.03(4)(b), which sets forth the formula for determining “good time” credit when a person is sentenced to detention at his or her place of residence or other place designated by the court. Again, there is nothing in this statute “implying”—to use LaDue’s phrase—that a judgment of conviction must add “good time” credit in with sentence credit.

¶9 In fact, by using the word “earns,” these two statutes reinforce our conclusion that a person is rewarded with “good time” for not “violat[ing] any law or any regulation of the jail, or neglect[ing] or refus[ing] to perform any duty lawfully required of him or her.” WIS. STAT. § 302.43.

¶10 The final statute LaDue uses is WIS. STAT. § 973.155(4), which provides that sentence credit “shall include earned good time for those inmates

³ Under WIS. STAT. § 302.43, every inmate of a county jail is eligible to earn “good time” in the amount of one-fourth of his or her term for good behavior if sentenced to at least four days, but may be deprived by the sheriff of good time if he or she “violates any law or any regulation of the jail, or neglects or refuses to perform any duty lawfully required of him or her,” except that the sheriff shall not deprive the inmate of more than two days good time for any one offense without the approval of the court.

subject to s. 302.43 ... serving sentences of one year or less and confined to a county jail” While this statute mixes “good time” and “sentence credit,” it does not require a court to determine “good time” that may be earned while confined to a county jail. We conclude that none of the statutes LaDue relies upon get to the result he wants; that is, a circuit court must determine the “good time” that a person will earn before the person begins to serve a sentence in the county jail.

¶11 We can affirm a circuit court for different reasons. *Rolland v. County of Milwaukee*, 2001 WI App 53, ¶6, 241 Wis. 2d 215, 625 N.W.2d 590. In this case, the circuit court provided that the jail sentences were authorized to be served in a prison and that LaDue would earn “good time.” However, the authorization was of no effect because WIS. STAT. § 973.03(2) requires:

A defendant sentenced to the Wisconsin state prisons and to a county jail or house of correction for separate crimes shall serve all sentences whether concurrent or consecutive in the state prisons.

¶12 Further, in *State ex rel. Darby v. Litscher*, 2002 WI App 258, ¶14, 258 Wis. 2d 270, 653 N.W.2d 160, we held that a prisoner in a state prison, who is serving misdemeanor sentences along with felony sentences, cannot take advantage of WIS. STAT. § 302.43. We wrote:

[W]e conclude that a prisoner is subject to the statutes and administrative rules that govern the facility in which he or she is incarcerated. The place of the confinement, rather than the nature of the underlying conviction, controls the question of good time.

Darby, 258 Wis. 2d 270, ¶13. In light of *Darby*, the circuit court could not order that LaDue earn “good time” on the misdemeanor sentences he would serve in a state prison.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

