

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 4, 2013

Diane M. Fremgen
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 Nos. 2012AP1823-CR
2012AP1824-CR**

**Cir. Ct. Nos. 2000CF19
2007CF33**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JAMES MATTHEW CASLER,

DEFENDANT-APPELLANT.

APPEALS from an order of the circuit court for Washburn County:
EUGENE D. HARRINGTON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. James Casler appeals an order partially denying his motion for sentence credit. He contends he should have received additional sentence credit for pretrial confinement and, if he had, his parole could not have been revoked and the Department of Corrections could not have extended his

confinement period because his sentence would have been served by the time he violated the conditions of his parole. Because we conclude Casler was not entitled to any additional sentence credit, we need not address his other issues and we affirm the order.¹

¶2 On January 25, 2001, Casler was sentenced to an indeterminate term of five years in prison with credit for 480 days' jail time by Judge Eugene Harrington. Four months later, he was sentenced to one year in prison consecutive to the January 25 sentence. On September 20, 2001, he was sentenced by Judge James Taylor for nine additional crimes, three of which are pertinent to these appeals. The court first sentenced Casler on count nine, a burglary charge transferred from Sawyer County. The court imposed a sentence of five years concurrent with the January 25 sentence but consecutive to all other sentences including counts one and two. On counts one and two, the court imposed sentences of two years' initial confinement and four years' extended supervision, concurrent with one another but consecutive to all other sentences.

¶3 Casler contends he is due 238 days of credit on counts one and two, and 480 days on count nine. He bases the calculation for counts one and two on the district attorney's statement that Casler was entitled to credit "for the time served up to when he was sentenced before Judge Harrington on May 30th," which the district attorney calculated to be 113 days. Because the sentencing before Judge Harrington was not on May 30 but, rather January 25, Casler

¹ We also note that any challenge to the Department of Corrections' extension of Casler's confinement period and any challenge to the jurisdiction of the Division of Hearings and Appeals to revoke his parole and extended supervision would have to be reviewed by writ of certiorari.

contends he is due 238 days. Casler's calculation of 480 days' credit on count nine is based on Judge Taylor's imposition of a sentence concurrent with the January 25 sentence and Judge Taylor's comment of "400 some days" due.

¶4 A defendant is due sentence credit for all time spent in custody "in connection with the course of conduct for which the sentence was imposed." WIS. STAT. § 973.155(1)(a) (2011-12). The defendant has the burden of proving his or her entitlement to the requested sentence credit. *State v. Villalobos*, 196 Wis. 2d 141, 148, 537 N.W.2d 139 (Ct. App. 1995).

¶5 Casler has not established his right to 238 days' sentence credit for counts one and two. Those sentences were consecutive to his earlier sentence. Had he received the requested sentence credit, he would have been awarded double credit. When consecutive sentences are imposed, pretrial jail time is credited to only one of the sentences. *State v. Boettcher*, 144 Wis. 2d 86, 100, 423 N.W.2d 533 (1988).

¶6 Casler has also not established his right to additional sentence credit on count nine. He relies on Judge Taylor's comment concerning "400 some days" credited against Casler's January 25 sentence. Regardless of how Judge Taylor's language is construed, Casler's entitlement to sentence credit is not a discretionary determination by the sentencing court. It is mandatory. *See State v. Carter*, 2010 WI 77, ¶51, 327 Wis. 2d 1, 785 N.W.2d 516. The fact that the sentence on count nine was concurrent with the January 25 sentence does not automatically entitle Casler to the same sentence credit. Sentence credit depends on a factual connection between the time spent in custody and the crime for which he was sentenced. *State v. Johnson*, 2009 WI 57, ¶3, 318 Wis. 2d 21, 767 N.W.2d 207. The record before this court contains no evidence establishing a nexus between

count nine and the 480 days Casler spent in custody before the January 25 sentencing.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12)

