

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 26, 2014

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 No. 2013AP2092-CR

Cir. Ct. No. 2008CF526

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TRAVIS J. HUSNIK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
THOMAS J. WALSH, Judge. *Affirmed.*

Before Hoover, P.J., Stark, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Travis Husnik appeals a judgment of conviction for two counts of manufacture/delivery of cocaine, second or subsequent offense. Husnik argues the circuit court erroneously calculated his sentence credit by not

crediting time served to two separate cases that were ordered to be served consecutively. We reject Husnik's argument, and affirm.

BACKGROUND

¶2 The parties agree Husnik was in custody from May 23, 2008, through January 19, 2010, in connection with both Brown County case No. 2008CF526 and Kewaunee County case No. 2008CF26. Husnik was sentenced first in the Kewaunee County case on January 19, 2010, and he received 583 days of sentence credit. He was later sentenced in the Brown County case on April 13, 2010. In that case, which is the subject of this appeal, the sentence was imposed consecutive to the Kewaunee County case. Ultimately, the Brown County Circuit Court determined Husnik was not entitled to any sentence credit for the time Husnik served in connection with the Kewaunee County case. Husnik appeals.

DISCUSSION

¶3 Husnik argues he is entitled to dual credit for his time served in connection with both cases. The sentence credit statute requires an award of credit against each sentence imposed “for all days spent in custody in connection with the course of conduct” underlying the sentence. WIS. STAT. § 973.155(1)(a).¹ Application of the sentence credit statute to undisputed facts presents a question of law subject to de novo review. *State v. Johnson*, 2008 WI App 34, ¶10, 307 Wis. 2d 735, 746 N.W.2d 581.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 The parties agree that Husnik was in custody “in connection with” both cases for the time period in which he seeks dual credit.² Thus, the sole question presented is whether Husnik is entitled to credit against his sentence in both cases, where the sentences were ordered to be served consecutively. This issue was resolved long ago in *State v. Boettcher*, 144 Wis. 2d 86, 87, 423 N.W.2d 533 (1988), where the court held:

We conclude that dual credit is not permitted—that the time in custody is to be credited to the sentence first imposed—and that, where the sentences are consecutive, the total time to be served is thus reduced by the number of days in custody Credit is to be given on a day-for-day basis, which is not to be duplicatively credited to more than one of the sentences imposed to run consecutively.

Further, the court explained,

We are satisfied, from the purpose of the statute and particularly the absence of any language even suggesting the possibility of dual credits where consecutive sentences are imposed, that the public policy behind the statute impels the conclusion we reach here: That custody credits should be applied in a mathematically linear fashion.

Id. at 100. The court also endorsed the position of the Wisconsin Criminal Jury Instructions Committee’s language in SM-34A V.B., that ““The objective with consecutive sentences is to assure that credit is awarded against one, but only one, of the consecutive sentences.”” *Id.* at 101.

¶5 Despite the supreme court’s holding in *Boettcher*, Husnik argues various statements in subsequent court of appeals decisions suggest he may nonetheless receive dual credit on his consecutive sentences. We disagree.

² Husnik remained in custody on both cases after failing to post bond.

¶6 First, we observe that the court of appeals lacks authority to overrule *Boettcher*. See *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997) (court of appeals may not overrule, modify, or withdraw language from a prior published opinion). Given *Boettcher*'s clear holding, and Husnik's failure to distinguish the case, we could end our analysis here. See *State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (we need not address inadequately developed arguments).

¶7 Husnik recites statements from three cases that he contends support his argument. The statements, however, are untethered from the context of the respective cases. Husnik's argument boils down to this: Husnik was held in custody on two cases after failing to post bail on each, and sentence credit can apply to both sentences in such situations. Husnik relies on *State v. Beiersdorf*, 208 Wis. 2d 492, 561 N.W.2d 749 (Ct. App. 1997); *State v. Harr*, 211 Wis. 2d 584, 568 N.W.2d 307 (Ct. App. 1997); and *Johnson*, 307 Wis. 2d 735.

¶8 The three cases Husnik cites are inapposite. They all merely resolved questions as to whether a defendant's presentence custody was "in connection with" two separate sentences. See *Beiersdorf*, 208 Wis. 2d at 496-97 ("The issue ... is whether Beiersdorf's forty-four days of custody were 'in connection with the course of conduct for which ... sentence was imposed.'"); *Harr*, 211 Wis. 2d at 591 (reversing trial court decision that defendant "was not in 'custody in connection with the course of conduct for which ... sentence was imposed'"); *Johnson*, 307 Wis. 2d at 736 ("At issue is whether the 'in connection with' requirement in the sentence credit statute ... applies individually to each concurrent sentence imposed at the same time."). This, however, is not an "in connection with" case. The parties agree Husnik was in custody in connection with both cases.

¶9 The only question presented here is whether Husnik may receive dual credit against consecutive sentences. *Boettcher* resolved that question contrary to Husnik’s position, no subsequent case has overruled or modified *Boettcher*, and none of the cases Husnik cites address the issue resolved in *Boettcher*. We therefore reject Husnik’s argument.

By the Court.—Judgment affirmed.

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

