

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 21, 2007

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. 2007AP70-CRAC

Cir. Ct. No. 2003CF66

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER B. VINE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Richland County:
EDWARD E. LEINEWEBER, Judge. *Reversed and cause remanded with
directions.*

Before Lundsten, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Christopher Vine appeals an order denying his motion for sentence credit. For the reasons discussed below, we conclude that Vine was entitled to some, but not all, of the credit he sought. Accordingly, we

reverse and remand with directions that the circuit court amend the judgment of conviction to award Vine 65 days of sentence credit.

BACKGROUND

¶2 The parties do not dispute the following facts. Vine was arrested on the current felony case on July 30, 2003, and was unable to post bail. At the time of his felony arrest, he was serving probation on one Iowa County misdemeanor case and two Richland County misdemeanor cases. Vine received probation holds on both of the Richland County misdemeanor cases and on the Iowa County misdemeanor case the same day as his arrest, based on his alleged commission of the felony offense.

¶3 While he was awaiting trial on the felony case, Vine's probation was revoked on all three of his outstanding misdemeanor cases. On December 12, 2003, Vine was sentenced to 45 days in jail on the Iowa County case, with no sentence credit. On April 20, 2004, Vine was sentenced to 9 months with 202 days of sentence credit on one of the Richland County misdemeanor cases, and consecutive terms of 3 months and 6 months with 133 days of sentence credit on the other Richland County misdemeanor case.¹ It appears the sentence credit for the misdemeanors included all of the time spent in jail since the probation hold, as well as pretrial detentions on those cases.²

¹ The State has included copies of the post-revocation judgments of conviction for the misdemeanor cases in the appendix to its brief even though they do not appear to have been included in the appellate record. Because the judgments are official court documents, and their accuracy is not disputed by the Appellant, we will take judicial notice of them.

² Although we do not have the records for the misdemeanor cases before us, the State provided an extended quote from the April 20, 2003 post-sentencing hearing in its trial brief on
(continued)

¶4 On June 10, 2004, Vine was sentenced to three years of initial confinement and three years of extended supervision on the present felony case. The circuit court stated that the sentence would be concurrent to the post-revocation sentence Vine was still serving, but refused to award sentence credit. Vine appeals the denial of sentence credit for his felony conviction.

DISCUSSION

¶5 WISCONSIN STAT. § 973.155(1)(a) (2005-06)³ 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.” As a general matter, when an offender spends time in custody for dual purposes, dual credit should be applied to concurrent sentences, but not to consecutive sentences. *See, e.g., State v. Ward*, 153 Wis. 2d 743, 744-46, 452 N.W.2d 158 (Ct. App. 1989) (requiring same credit to be applied to each of three concurrently imposed sentences); *State v. Boettcher*, 144 Wis. 2d 86, 87, 100-01, 423 N.W.2d 533 (1988) (applying credit only to the first of consecutively imposed sentences). However, dual sentence credit should not be granted for presentence time during which the defendant was serving another sentence for a separate crime. *See State v. Amos*, 153 Wis. 2d 257, 280-81, 450 N.W.2d 503 (Ct. App. 1989). This is true even if the commission of the latter offense triggered a revocation hearing for the earlier case. *See State v. Beets*, 124 Wis. 2d 372, 376-82, 369 N.W.2d 382 (1985). We will independently review the application of the

the sentence credit issue on this case, and the Appellant does not dispute that he received credit on the post-revocation cases for the time he was on the probation hold.

³ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

sentence credit statute to an undisputed set of facts. *State v. Abbott*, 207 Wis. 2d 624, 628, 558 N.W.2d 927 (Ct. App. 1996).

¶6 Here, the parties agree that Vine was in dual custody in connection with both the present felony case and his prior misdemeanor cases from the time of his arrest on July 30, 2003, to the time of his sentencing on the felony on June 10, 2004. They further agree that, under *Beets*, Vine cannot obtain dual credit on the felony case for the time he spent actually serving his revocation sentences on the misdemeanor cases—namely from December 12, 2003, through January 25, 2004, and from April 20, 2004, onward. That leaves 220 days of potential sentence credit at issue on this appeal—from July 30, 2003, through December 11, 2003, and from January 26, 2004, through April 19, 2004, when Vine was both on the probation hold for the misdemeanor cases and awaiting trial on the felony case.

¶7 Vine contends that he is entitled to have credit for all of the 220 days because the circuit court imposed the felony sentence concurrent to all of the revocation sentences. The State counters that the felony sentence was really only concurrent to the last of the consecutive misdemeanor sentences, because the other sentences had already been served by the time Vine was sentenced on the felony. The State calculates that, taking good time into account, 202 days of the previously awarded 335 days of credit reduced the first consecutive misdemeanor sentence of 9 months to time served, and 68 days of the previously awarded credit reduced the second consecutive misdemeanor sentence of 3 months to time served, leaving only 65 days of credit to be applied to the third consecutive misdemeanor sentence of 6 months, which Vine was still serving when he was sentenced on the felony count.

¶8 We agree with the State that, logically speaking, the felony sentence could not have been imposed concurrent to any sentence which had already been fully served. Vine contends that his consecutive sentences in the Richland County cases should be computed as one continuous sentence for purposes of determining whether he had already served them, analogous to the procedure set forth in WIS. STAT. § 302.113(4). That section, however, applies only to bifurcated sentences, explaining that all terms of confinement to prison should be served before any terms of extended supervision begin. Since the misdemeanor sentences at issue here were not bifurcated and did not include terms of extended supervision, those sentences would have been discharged one by one as the time on each was served.

¶9 In sum, then, we agree with the State that Vine can receive dual sentence credit on his felony sentence only for time which was not already awarded on fully served sentences. Since Vine has not challenged the State's calculation of how the prior award of 335 days of sentence credit on the revocation cases reduced the first two misdemeanor sentences imposed on April 20, 2004, to time served, with 65 days of credit remaining for the third consecutive misdemeanor sentence, we accept that calculation without further analysis. Accordingly, we reverse the order denying Vine's motion for sentence credit, and remand with directions that the circuit court amend the judgment of conviction in this case to show 65 days of sentence credit.

By the Court.—Order reversed and cause remanded with directions.

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

