

Appendix

Caselaw:

Favorable Cases for Us:

- *State v. Zaburones*, Appeal No. 2018AP1845-CR (Ct. App., September 10, 2019) (Defendant placed on probation on one count with DPA on other counts. When probation and DPA are both revoked, client is entitled to credit against DPA counts for time spent in custody on probation holds).
- *State v. (Antonio) Johnson*, 2018 WI App 2 (A day in custody is any portion of the day the defendant is actually in custody--rejects "12 hour rules" and many other such local practices for determining credit).
- *State v. Davis*, 2017 WI App 55 (A defendant being revoked from supervision continues accruing credit until he is returned to the prison system).
- *State v. Obriecht*, 2015 WI 66, 363 Wis. 2d 816, 867 N.W.2d 387 (credit must be applied to reduce term of confinement, if possible, rather than term of supervision).
- *State v. Hintz*, 3000 Wis. 2d 583, 731 N.W.2d 646 (Ct. App. 2000) (entitled to credit on new sentence for time spent in custody on po hold that was based, at least in part, on course of conduct related to new sentence even where defendant signed signature bond immediately on new case).
- *State v. Floyd*, 2000 WI 14, 232 Wis. 2d 767, 606 N.W.2d 155 (entitlement to credit for time spent in custody in connection with read-in charges).
- *State v. Carter*, 2010 WI 77, 327 Wis. 2d 1, 785 N.W.2d 516 ("in connection" requirement met by factual connection, i.e. basis for arrest/custody, rather than requirement of formal procedural connection, i.e. appearance in court, filing of charges, ect.).
- *State v. Yannick*, 2007 WI App 30, 299 Wis. 2d 456, 728 N.W.2d 365 (strange case...prison sentence did not sever connection or stop conditional jail term from running, thereby allowing credit after revocation of probation where time had already been served in prison).
- *State v. (Elisio) Brown*, 2010 WI App 43, 324 Wis. 2d 236, 781 N.W.2d 244 (court can't deny sentence credit because defendant *could* receive credit on another sentence at a later point in time).
- *State v. (Kevin) Brown*, 2006 WI App 41, 289 Wis. 2d 823, 711 N.W.2d 708 (credit due for time served in federal prison after Wisconsin sentence was imposed; reasoning based on Wis. Stat. § 973.15(5) creating a [factual] connection between custody and course of conduct for which sentence imposed in Wisconsin).
- *State v. Trepanier*, 2014 WI App 105, 357 Wis. 2d 662, 855 N.W.2d 465 (connection between defendant's custody related to criminal case was not severed when defendant was ordered to serve civil commitment for failing to pay fine in unrelated case).

Cases Not Going Our Way (AKA “The major cases”)

- *State v. Boettcher*, 144 Wis. 2d 86, 423 N.W.2d 533 (1988) (no duplicate credit on consecutive sentences; day-for-day credit against sentence imposed first).
- *State v. Beets*, 124 Wis. 2d 372, 369 N.W.2d 382 (1985) (connection severed between custody and pending charges after defendant sentenced after revocation of probation).
- *State v. Jackson*, 2000 WI 41, 233 Wis. 2d 231, 607 N.W.2d 338 (*Boettcher* applies to sentences not ordered consecutive to one another, but served after one another (i.e. second sentence imposed after first sentence complete)).
- *State v. Friedlander*, 2019 WI 22 (No credit after being mistakenly released from custody).
- *State v. Magnuson*, 2000 WI 19, 233 Wis. 2d 40, 606 N.W.2d 536 (custody = subject to escape charge for leaving status, bond condition including home confinement and electronic monitoring not custody under statute).
- *State v. (Elandis) Johnson*, 2009 WI 57, 318 Wis. 2d 21, 767 N.W.2d 207 (concurrent sentences imposed at the same time does not automatically entitle defendant to credit on all cases if no factual connection existed between custody and course of conduct for which sentence imposed in every case).
- *State v. (Marcus) Johnson*, 2007 WI 107, 304 Wis. 2d 318, 735 N.W.2d 505 (no entitlement to credit where defendant was already in custody on juvenile commitment when he picked up an adult battery charge).
- *State v. Piggue*, 2016 WI App 13 & *State v. Fleming*, 2017AP1851-CR, unpublished decision (Ct. App. July 17, 2018) (*Floyd* rule is limited to read-in charges).
- *State v. Lamar*, 2011 WI 50, 334 Wis. 2d 536, 799 N.W.2d 50 (*Boettcher* applies to Wis. Stat. § 973.04 credit, no duplicate credit).
- *State v. Tuescher*, 226 Wis. 2d 465, 595 N.W.2d 443 (Ct. App. 1999) (“course of conduct” refers to specific acts for which sentence imposed, not broader “criminal episode.”).

Relevant Statutes:

- Wis. Stat. § 973.155 (the sentence credit statute)
- Wis. Stat. § 973.15 (the statute on sentences/structure/etc.)
- Wis. Stat. § 973.04 (credit for time served on vacated sentence that is reimposed)
- Wis. Stat. § 304.072 (dealing with revocation related credit)
- Wis. Stat. § 302.043 (good time credit in jail; *see also* Wis. Stat. § 973.155(4) stating that sentence credit “includes earned good time”)
- Wis. Stat. §§ 302.11(7)(am) and 302.113(9)(am) (DHA or DOC to grant credit due upon revocation where no return to court for sentencing).

Other Authority:

- Wisconsin Criminal Jury Instructions: Special Materials (WIS JI-CRIMINAL SM-34A): Determining Sentence Credit Under Section 973.155
- Wisconsin Judicial Bench Book - Criminal and Traffic, Volume IA, § 37.51-57

Helpful Materials:

- Timeanddate.com (Date calculator)
- Wisconsinappeals.net (Searchable database of recent sentence credit cases with SPD-authored analysis)
- The Department of Hearings and Appeals also has a resource handbook with some credit-specific information (this is presumably what your ALJ is using as a resource).
[https://doa.wi.gov/DHA/Handbook%20Final%20\(9.1.2016\).pdf](https://doa.wi.gov/DHA/Handbook%20Final%20(9.1.2016).pdf)
- Wisconsin DOC Sentence Computation for your client (available through the records office at the prison at which your client is imprisoned)