

SUPREME COURT OF WISCONSIN

State v. Andrew M. Obrieht

363 Wis. 2d 816 (2015) · No. 2013AP1345-CR · Decided July 7, 2015

SUMMARY

The Wisconsin Supreme Court reviewed whether Andrew M. Obrieht was entitled to sentence credit for pre-incarceration custody after revocation of parole from an indeterminate felony sentence. The court held that the felony sentence resumed upon parole revocation and that 42 days of qualifying custody should have been credited against the felony sentence. The court reversed the court of appeals' decision affirming denial of the sentence-credit motion.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Patience Drake Roggensack, Chief Justice; Ann Walsh Bradley, J.; Shirley S. Abrahamson, J.; N. Patrick Crooks, J.; Patience Drake Roggensack, C.J.
JURISDICTION	Wisconsin
DECIDED	July 7, 2015
DOCKET	2013AP1345-CR
DISPOSITION	reversed
PROCEDURAL POSTURE	Review of a published decision of the Wisconsin Court of Appeals affirming the Dane County Circuit Court's denial of Obrieht's motion for sentence credit.
STANDARD OF REVIEW	Statutory interpretation and application are reviewed independently as questions of law, while benefiting from prior decisions of other courts.
PRECEDENTIAL VALUE	binding
PARTIES	Andrew M. Obrieht v. State of Wisconsin

TOPICS

[sentencing](#) [sentence modification](#) [statutory interpretation](#) [post-conviction relief](#) [appellate procedure](#)

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether sentence credit for qualifying custody must be applied to incarceration rather than to parole when a defendant's parole is revoked.
2. Whether the indeterminate felony sentence imposed after probation revocation resumes running upon parole revocation and is available to receive sentence credit.
3. How much of Obrieht's previously uncredited custody was connected to the course of conduct underlying the consecutive felony sentence.

HOLDINGS

1. When a convicted defendant's parole is revoked, qualifying sentence credit must be applied to the defendant's incarceration under the original sentence rather than merely reducing a subsequent period of parole.
2. Sentence credit is available only for custody that is factually connected to the course of conduct for which the sentence was imposed.
3. Of the 105 days of custody remaining uncredited after the misdemeanor credit awards, 42 days were connected to the conduct underlying the felony sentence and should have been applied to the felony reincarceration.

KEY QUOTATIONS

“Therefore, when Obrieht's parole was revoked, the seven-year indeterminate sentence for Obrieht's felony conviction caused reincarceration.” (¶ 35)

“The plain language of § 973.155(3) demonstrates that Obrieht is entitled to have the total amount of time he must spend in prison reduced by the amount of time he has spent in custody outside of prison when custody is in connection with the conduct for which the sentence is imposed.” (¶ 36)

“Therefore, 42 of the 105 days of custody prior to Obrieht's 2001 incarceration should have been applied to his term of reincarceration for the felony conviction.” (¶ 42)

FACTUAL BACKGROUND

Obrieht was arrested in 1998 and later convicted of seven misdemeanors and one felony arising from the same course of conduct. He spent 462 days in custody before entering prison in April 2001, but received only 357 days of sentence credit against the misdemeanor sentences. After his felony probation was revoked, the circuit court imposed a consecutive seven-year indeterminate sentence without awarding additional credit. When his parole from that felony sentence was later revoked, the dispute concerned whether and how the previously uncredited custody should be applied.

PROCEDURAL HISTORY

Obrieht was convicted of seven misdemeanors and one felony. The circuit court awarded some sentence credit against the misdemeanor sentences, later imposed a consecutive indeterminate seven-year felony sentence after revoking probation, and did not award additional credit. After Obrieht's parole from the felony sentence was

revoked, the circuit court initially awarded sentence credit but then applied it to possible future parole rather than reincarceration. The court of appeals affirmed, and the Wisconsin Supreme Court reversed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The decision of the Wisconsin Court of Appeals affirming the circuit court's denial of sentence credit was reversed. The opinion does not state a separate remand instruction.

CASES CITED

- State v. Obriecht, 2014 WI App 42, 353 Wis. 2d 542, 846 N.W.2d 479
- G.S., Jr. v. State, 118 Wis. 2d 803, 805, 348 N.W.2d 181 (1984)
- Richards v. Badger Mut. Ins. Co., 2008 WI 52, 309 Wis. 2d 541, 749 N.W.2d 581
- State ex rel. Kalal v. Circuit Court for Dane Cnty., 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110
- Klimas v. State, 75 Wis. 2d 244, 249, 249 N.W.2d 285 (1977)
- State v. Beets, 124 Wis. 2d 372, 379, 369 N.W.2d 382 (1985)
- State v. Wolfe, 2001 WI App 66, 242 Wis. 2d 426, 625 N.W.2d 655
- State v. Marcus Johnson, 2007 WI 107, 304 Wis. 2d 318, 735 N.W.2d 505
- State v. Magnuson, 2000 WI 19, 233 Wis. 2d 40, 606 N.W.2d 536
- State v. Elandis Johnson, 2009 WI 57, 318 Wis. 2d 21, 767 N.W.2d 207
- State v. Hintz, 2007 WI App 113, 300 Wis. 2d 583, 731 N.W.2d 646
- State v. Edwards, 2013 WI App 51, 347 Wis. 2d 526, 830 N.W.2d 109
- State v. Gilbert, 115 Wis. 2d 371, 380, 340 N.W.2d 511 (1983)
- State v. Boettcher, 144 Wis. 2d 86, 93-95, 423 N.W.2d 533 (1988)
- Doyle v. Elsea, 658 F.2d 512, 515 (1981)
- State ex rel. Flowers v. DHSS, 81 Wis. 2d 376, 384-86, 260 N.W.2d 727 (1978)
- County of Dane v. LIRC, 2009 WI 9, 315 Wis. 2d 293, 759 N.W.2d 571
- State v. Stenklyft, 2005 WI 71, 281 Wis. 2d 484, 697 N.W.2d 769