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State v. Fortner Respondent's Brief Dckt. 39765

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 39765
)	
vs.)	
)	
LEON JASON FORTNER,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

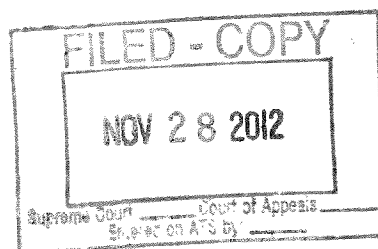
**HONORABLE G. RICHARD BEVAN
District Judge**

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**ATTORNEY FOR
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STATEMENT OF THE CASE

Nature of the Case

Leon Jason Fortner appeals from the district court's order denying his motion for credit toward his Idaho sentence for time he served in Utah on separate criminal offenses.

Statement of Facts and Course of Proceedings

On October 19, 1999, Fortner led Idaho police officers on a high speed chase, during which Fortner abandoned the stolen vehicle he was driving, stole two more vehicles and struck an officer with one of the stolen vehicles as he fled. (R., pp.11-16; #28828 R., pp.11-16.) Fortner successfully eluded Idaho police but was arrested the same day in Utah and was charged with several criminal offenses in that state. (R., p.15; #28828 R., p.15; 1/30/12 Tr., p.18, L.13 – p.19, L.14; 7/22/02 Tr., p.6, Ls.18-24, p.9, Ls.12-22.)

On October 25, 2001, the Twin Falls County Prosecuting Attorney filed a complaint charging Fortner in relation to his October 19, 1999 conduct with two counts of felony eluding a peace officer, two counts of aggravated battery, one count of grand theft by possession of stolen property and one count of grand theft. (#28828 R., pp.7-10; #39765 Exhibits, pp.12-15.) Fortner was arrested on the Idaho charges on April 18, 2002, and thereafter pled guilty to one count of felony eluding, one count of aggravated battery and one count of grand theft. (#28828 R., pp.4, 30, 38-46; #39765 Exhibits, pp.1, 16-24.) He was sentenced on the Idaho charges on July 22, 2002. (#28828 R., pp.38-46; #39765 Exhibits, pp.16-24.)

On November 18, 2011, Fortner filed a motion seeking credit toward his Idaho sentences for time he spent incarcerated in Utah before he was arrested on the Idaho charges. (R., pp.8-45.) At the hearing on his motion, Fortner argued that he was entitled to credit toward his Idaho sentences for the time served in Utah because the crimes he committed in Utah were “similar” to those he committed in Idaho and were “one continuous act.” (1/30/12 Tr., p.18, L.13 – p.22, L.2, p.28, L.4 – p.30, L.14.) The district court denied Fortner’s motion insofar as it sought credit for the time he served in Utah on the Utah offenses, finding “[a]s a matter of law ... that the Utah charges are independent from the Idaho charges.” (1/30/12 Tr., p.31, L.7 – p.33, L.2; R., pp.54-56.) The court clarified, however, that Fortner was entitled to credit for 96 days of prejudgment incarceration served between the date he was arrested and the date he was sentenced on the Idaho charges. (1/30/12 Tr., p.33, Ls.3-8; R., p.55.) Fortner timely appeals. (R., pp.58-61.)

ISSUE

Fortner states the issue on appeal as:

Mindful of the fact that Mr. Fortner was seeking credit for time he had served for his Utah offenses prior to his sentencing for his offenses in Idaho, did the district court err in not granting Mr. Fortner's motion for credit for time served?

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Fortner failed to show error in the denial of his motion for credit toward his Idaho sentence for time he served in Utah on separate criminal offenses?

ARGUMENT

Fortner Has Failed To Show Error In The Denial Of His Motion For Credit For Time Served

A. Introduction

The district court denied Fortner's motion for credit for time served insofar as it sought credit toward his Idaho sentences for time he spent incarcerated in Utah before he was arrested on the Idaho charges. (R., pp.54-56.) "Mindful" that he is not legally entitled to such credit, Fortner nevertheless argues that the district court erred. (Appellant's brief, pp.4-6.) As Fortner all but concedes, however, correct application of the law to the facts of this case supports the district court's decision.

B. Standard Of Review

"The question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts." State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005) (citing State v. Hale, 116 Idaho 763, 779 P.2d 438 (Ct. App. 1989)).

C. The District Court Correctly Determined That Fortner Is Not Entitled To Credit Toward His Idaho Sentence For Time He Served In Utah On Separate Criminal Charges

A defendant's entitlement to credit for time served is governed by I.C. § 18-309, which states in relevant part:

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit for any period of incarceration prior to entry of judgment, ***if such incarceration was***

for the offense or an included offense for which the judgment was entered. The remainder of the term commences upon the pronouncement of sentence

I.C. § 18-309 (emphasis added). Pursuant to this statute, a defendant is only entitled to credit for pre-judgment incarceration that was actually attributable to the Idaho offense or conduct for which the defendant is being sentenced. State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005) (citing State v. Horn, 124 Idaho 849, 850, 865 P.2d 176, 177 (Ct. App. 1993); State v. Hale, 116 Idaho 763, 765, 779 P.2d 438, 440 (Ct. App. 1989)); State v. Akin, 139 Idaho 160, 164, 75 P.3d 214, 218 (Ct. App. 2003). A defendant is not entitled to credit against his or her Idaho sentence for time served on separate charges in another state; unless and until the defendant is arrested and confined on the Idaho charges, no credit toward the Idaho sentence is due. State v. Moliga, 113 Idaho 672, 676, 747 P.2d 81, 85 (Ct. App. 1987); State v. Teal, 105 Idaho 501, 670 P.2d 908 (Ct. App. 1983).

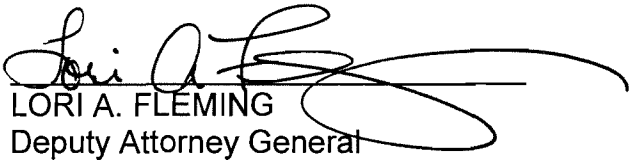
Applying the above legal principles, the district court correctly determined that Fortner was not entitled to credit toward his Idaho sentences for the time he served in Utah on separate criminal offenses. Although Fortner committed the Idaho offenses and the Utah offenses on the same day, October 19, 1999 (R., pp.11-16; #28828 R., pp.11-16; 1/30/12 Tr., p.18, L.13 – p.19, L.14), he was not arrested on the Idaho offenses until April 18, 2002 (#28828 R., p.4; #39765 Exhibits, p.1) Any time Fortner spent incarcerated in Utah before that date was attributable solely to the Utah offenses and not to the Idaho offenses for which

Fortner's sentence was ultimately imposed.¹ Fortner has failed to show error in the denial of his motion.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Fortner's motion for credit for time served.

DATED this 28th day of November 2012.


LORI A. FLEMING
Deputy Attorney General

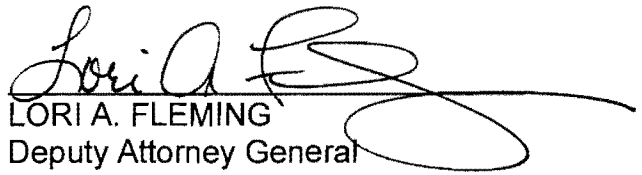
¹ This is true even if, as Fortner contended below, the Idaho offenses and Utah offenses were "similar" and committed as continuous course of conduct. (See 1/30/12 Tr., p.18, L.13 – p.22, L.2, p.28, L.4 – p.30, L.14.) Although the Idaho offenses and Utah offenses may have "evolved from a continuing course of conduct," as a matter of law the acts for which Fortner was prosecuted in Utah were not the same acts for which he was prosecuted in Idaho. See State v. Madden, 147 Idaho 886, 889-90, 216 P.3d 644, 647-48 (Ct. App. 2009).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of November 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SARAH E. TOMPKINS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.


LORI A. FLEMING
Deputy Attorney General

LAF/pm