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State v. Jimison Appellant's Reply Brief Dckt. 39947

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 39947
)	
v.)	VALLEY COUNTY NO. CR 2006-1285
)	
RICARDO A. JIMISON,)	APPELLANT'S
)	REPLY BRIEF
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF VALLEY

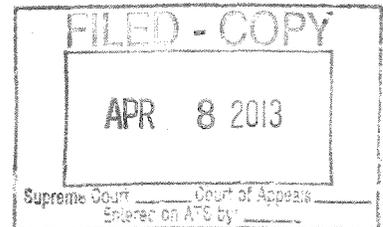
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STATEMENT OF THE CASE

Nature of the Case

On appeal, Mr. Jimison asserts that the district court erred when it denied his Rule 35 motion requesting credit for time served for at least thirty-six days of prejudgment incarceration. Alternatively, he argues that the district court erred when it denied his motion without a hearing or an explanation for the denial, including making findings of fact.

In its Respondent's Brief, the State argues that the district court's denial of Mr. Jimison's motion should be affirmed because "[t]he record . . . contains no evidence that this time was not included in the district court's award of credit for time served."

This Reply Brief is necessary to respond to the State's argument.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Jimison's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference.

ISSUE

Did the district court err when it denied Mr. Jimison's request for credit for time served?

ARGUMENT

The District Court Erred When It Denied Mr. Jimison's Request For Credit For Time Served

In its Respondent's Brief, the State argues,

"Error is never presumed on appeal and the burden of showing it is on the party alleging it." Stewart v. Sun Valley Co., 140 Idaho 381, 384, 94 P.3d 686, 689 (2004) (quotations omitted); Farrell v. Board of Com'rs, Lemhi County, 138 Idaho 378, 390, 64 P.3d 304, 316 (2002) (appellant carries burden of showing error on record and error never presumed); State v. Mowrey, 128 Idaho 804, 805, 919 P.2d 333, 334 (1996) (appellant has burden of showing error in record). Although Jimison is entitled to credit for time served while incarcerated after his arrest in Nevada on the failure to appear warrant, he has failed to articulate, much less demonstrate on the record, any basis for believing this time was not included in the district court's grant of credit for time served. He has therefore failed to show error.

(Respondent's Brief, pp.6-7.)

It is important to note that the State acknowledges that when the district court denied his motion, which included claims other than his request for credit for time served, it "set[] forth its analysis of the new claims" but did not "specifically address[] any claim of credit for time served." (Respondent's Brief, p.2.) Therefore, there are no findings of fact to which this Court may, let alone must, defer concerning the denial of Mr. Jimison's request for credit for time served. Furthermore, the judgment granting credit for time served contains no analysis or explanation for how the district court reached its determination of the amount of credit, let alone whether it considered the days at issue in Mr. Jimison's motion. (R., pp.79-80; Tr., p.58, L.3 – p.66, L.14.)

While it may be possible that Mr. Jimison has failed to present sufficient evidence that he is entitled, on appeal, to the thirty-six days of credit following his arrest in Nevada, he has certainly established his entitlement to a remand of his case for the

district court to set forth the basis by which it calculated his credit for time served and denied his motion. Failure to require findings of fact or an explanation of the basis for denying the motion deprives Mr. Jimison of the opportunity for meaningful appellate review of the district court's decision, thereby violating his constitutional right to due process under both the Constitutions of both the United States and Idaho.¹ *Miranda v. Bennett*, 322 F.3d 171, 175 (2d Cir. 2003) ("Where an appeal turns on factual issues, findings of fact by the district court are normally needed in order to permit meaningful appellate review. Although we proceed with review of a district court's decision even where it lacks findings 'if we are able to discern enough solid facts from the record to permit us to render a decision,' we, like other appellate courts, remand to the district court when the record is insufficiently clear to permit us to determine the basis for the district court's decision") (internal citation omitted).

CONCLUSION

For the reasons set forth herein and in his Appellant's Brief, Mr. Jimison respectfully requests that this Court order that he be given additional credit for time served in the amount of thirty-six days.

¹ While the states are not required to provide for appellate review, once a state has made the right to appellate review an integral part of the system for finally adjudicating the guilt or innocence of a defendant, the Due Process Clause protects persons at all stages of the process, including the appeal. See *Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (citing *McKane v. Durston*, 153 U.S. 684, 687-88 (1894)); see also *Evitts v. Lucey*, 469 U.S. 387, 401 (1985).

In the alternative, he respectfully requests that this Court remand this matter to the district court for a hearing on the issue or, at the very least, order the district court to give its reasons for denying his request, including making findings of fact.

DATED this 8th day of April, 2013.



SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of April, 2013, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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INMATE #19056
SICI
PO BOX 8509
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MICHAEL R MCLAUGHLIN
DISTRICT COURT JUDGE
ADA COUNTY DISTRICT COURT
EMAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION

Hand delivered to Attorney General's mailbox at Supreme Court.



NANCY SANDOVAL
Administrative Assistant

SJH/ns