

6-7-2013

Sittre v. Central Records Sentencing Specialist Respondent's Brief 1 Dckt. 40484

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"Sittre v. Central Records Sentencing Specialist Respondent's Brief 1 Dckt. 40484" (2013). *Not Reported*. 1169.
https://digitalcommons.law.uidaho.edu/not_reported/1169

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

TABLE OF CONTENTS

| | <u>Page</u> |
|---|--------------------|
| TABLE OF CASES AND AUTHORITIES | iii |
| STATEMENT OF THE CASE..... | 2 |
| Nature of the Case..... | 2 |
| Proceedings Below..... | 2 |
| Statement of the Facts..... | 2 |
| ISSUE PRESENTED..... | 3 |
| STANDARD OF REVIEW | 4 |
| ARGUMENT AND ANALYSIS | 4 |
| 1. Sittre has failed to establish the District Court erred in dismissing her petition..... | 4 |
| CONCLUSION..... | 6 |
| CERTIFICATE OF SERVICE | 6 |

TABLE OF CASES AND AUTHORITIES

| <u>Cases</u> | <u>Page</u> |
|--|--------------------|
| <i>Idaho Power Company. v. Idaho State Tax Commission.</i> , 141 Idaho 316, 321, 109 P.3d 170, 175 (2005). | 4 |
| <i>Wheeler v. Idaho Department of Health and Welfare</i> , 147 Idaho 257, 207 P.3d 988 (2009). | 4 |

Statutes

None

Rules

None

STATEMENT OF THE CASE

A. Nature of the Case

This is a habeas corpus case in which the appellant (“Sittre”), a pro se incarcerated inmate, filed a complaint in the District Court claiming that her rights under the Habeas Corpus Litigation and Procedures Act were violated because her sentences were miscalculated. The District Court dismissed her complaint.

B. Proceedings Below

On February 17, 2012, Sittre filed a petition for writ of habeas corpus. (CR000016). On March 8, 2012, the District Court entered an order requiring Sittre to serve an amended petition. (CR000065). Sittre filed the amended petition on April 23, 2102. (CR 000071) and on July 31, 2012, the District Court entered an order requiring a response. (CR 000090). The Respondents moved for Summary Judgment on September 7, 2012. (CR 000105). Sittre responded on September 18, 2012. (CR000130). The District Court granted summary judgment on October 17, 2012. (CR 000136). This appeal followed (CR 000143).

C. Statement of the Facts

On April 23, 2012, Sittre filed a habeas corpus petition claiming her sentences had been miscalculated and she was entitled to additional credit for time served. However, she offered no explanation for her claim other than what appeared to be her belief that credit for time served in one case should automatically apply in a different case. (CR 000071). The IDOC filed a motion for summary judgment. (CR 000105) supported by the affidavit of an IDOC sentencing specialist. (CR 0000111). The affidavit

established that the credit for time served in Sittre's cases had been calculated correctly. On September 16, 2012, the District Court entered an order finding that Sittre's sentences had been calculated correctly and dismissed her petition. (CR 000136-140). This appeal followed. (CR 000143).

ISSUES PRESENTED

Sittre provides no statement of the issue on appeal

Respondents wishes to restate the issue as follows;

Sittre has failed to establish that the District Court erred in concluding that her sentences had been properly calculated

STANDARD OF REVIEW

The Appellate Court defers to the District Court's findings of fact if they are supported by substantial evidence while legal conclusions are reviewed de novo. *Idaho Power Company. v. Idaho State Tax Commission.*, 141 Idaho 316, 321, 109 P.3d 170, 175 (2005).

ARGUMENT

- 1. Sittre has failed to establish the District Court erred in ruling that her sentences had been calculated correctly.**

Sittre's appellant brief provides no argument as to how the District Court erred. Her sole argument is simply that she "feels her sentence is still miscalculated with her new credit for time served." *Appellant Brief*, p. 2. Her failure to provide argument or analysis supports waiver of her claim that the District Court erred. *Wheeler v. Idaho Department of Health and Welfare*, 147 Idaho 257, 207 P.3d 988 (2009).

A brief review of the facts is helpful. As stated by Respondents in their motion for summary judgment:

On April 27, 2011, in Bannock County case, No. CR 2009-0012496, the Honorable Judge Nye issued an order revoking Sittre's probation and, in pertinent part, ordered that "Defendant be given credit for any time she has served in connection with this matter. This includes any time spent on the retained jurisdiction program." *Wilmoth aff, exh. A*. The IDOC then contacted the Bannock County jail, as it does in all such cases, to obtain jail documentation for the credit she was to receive. *Wilmoth aff., paragraph 3*. The jail responded by indicating that their records showed that Sittre should receive credit for 154 days. *Wilmoth aff, exh. D*.

About six months later, on September 28, 2011, the Honorable Darren Simpson issued an order giving Sittre credit for time served in the amount of 479 days in her Bingham County case, CR 2008-1579. *Wilmoth aff, exh. B*. The IDOC's official time calculation reflects the credits in both cases. *Wilmoth aff, exh. C (information on line designated "Jail Credits")*

Sittre disputes the calculation in her two cases but offers no cognizable explanation of why. The key may, in part, be her mistaken belief that her probation was not violated in her Bannock County and what appears to be the fairly common belief among inmates that somehow credit for time served in multiple cases must align. Specifically:

She [Sittre] was never violated in Bannock, that is why Judge Nye stated in Commitment order ‘Defendant is given credit for any time she has served in this matter.’ So Sittre *feels* Judge Simpson’s calculated jail time, along with her incarceration be credited to not only CR-08-1579, but with CR -0-12496 plus the 34 days she was in Caribou County, May 24-June 27, 2011.

Petition p. 2 (emphasis added).

In response to an inquiry from Sittre, the IDOC wrote her back and explained that in order to correct credit for time served, the IDOC must have official documentation or a court order. *Wilmoth aff, exh. E*. Sittre has not provided either.

Motion for Summary Judgment, p. (CR 000105).

The Respondents moved for summary judgment. The District Court reviewed the supporting documents and noted that it was “unable to substantiate the petitioners’ assertion that her sentences have been miscalculated and the materials submitted show no miscalculation has occurred.” *Memorandum Decision*, (CR 000138). On that basis, summary judgment was granted. As indicated, Sittre provides no argument as to how the District Court erred. As attested by the IDOC sentencing specialist, it is not uncommon for many prisoners to believe that credit for time served applies to all cases that the prisoner is sentenced on. *Aff. Of R. Wilmouth* (CR 000111). The record establishes that the District Court applied the correct standard of law, carefully reviewed the evidence and reached the proper conclusion. Sittre has failed to establish error.

CONCLUSION

For the reasons set forth above, the District Court's Memorandum Decision and Order dismissing Sittre's case should be affirmed.

Respectfully submitted this 31st day of May 2013.



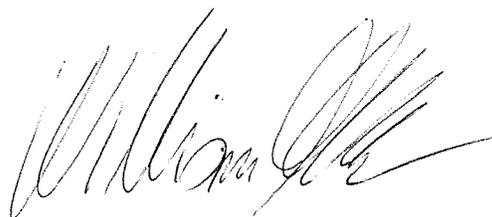
WILLIAM M. LOOMIS
Deputy Attorney General
Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31 of May 2013, I caused to be mailed two true and correct copies of the foregoing to:

Jonnine Sittre #27526
SBWCC
1320 S. Pleasant Valley Rd
Kuna, ID 83634

via the prison mail system.



WILLIAM M. LOOMIS