

6-24-2013

Sittre v. Central Records Sentencing Specialist Respondent's Brief 2 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 2 Dckt. 40484" (2013). *Not Reported*. 1170.
https://digitalcommons.law.uidaho.edu/not_reported/1170

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.

JOANNINE SITTRE,
Petitioner/Appellant,

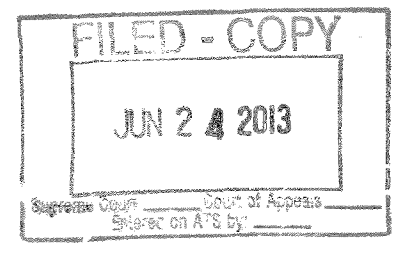
) Docket No. : 40484 - 2012
)

) DC Docket No. : 2012-02899
)

V.

CENTRAL RECORDS SENTENCING
SPECIALIST,

Defendant Respondents



RESPONDENT'S BRIEF

Appeal from the District Court of the
Fourth Judicial District, In and
For The County of ADA

HONORABLE DANIEL HURLBUTT, DISTRICT JUDGE,
PRESIDING

LAWRENCE G. WARDEN
ATTORNEY GENERAL

JOANNINE SITTRE #27526
GEN COUNTY JAIL
410 E. FIRST
EMMETT, IDAHO - 83617 -

WILLIAM M. LOOMIS,
ISB # 4132
Office of the Attorney General
Department of Correction
1299 N. Orchard Street,
Suite 110
Boise, Idaho - 83706 -

Petitioner/Appellant, pro Se

Attorney for Respondents

A. NATURE OF THE CASE

In this Appellant's Reply Brief, Sittre, a pro se incarcerated inmate, claims that her rights are violated and that District Court erred in dismissing her complaint.

B. PROCEEDINGS BELOW

On January 28, 2013, Sittre received a hearing for MOTION FOR CREDIT FOR TIME SERVED IN BANNOCK COUNTY towards case CR-09-~~12~~496, from the Honorable Judge Nye. In which she received 410 days credit, she then noticed this credit only brought her sentence up to 3/10/14, from 11/22/14. Now Sittre asked for the 34 days credit from Caribow County, Honorable Judge Simpson or Honorable Judge Nye have no jurisdiction over this credit since she, Sittre, was already sentenced.

SITTRE V. STATE, Bannock County CR-2009-12496,
STATE V. JAKOSKI, 132 Idaho 67, 966 P2.d 663 (Ct. App. 1998).

C. STATEMENT OF FACTS

Although Sittre has received her new credit for time served she feels that there is still a miscalculation, Cranney v. Mutual of Enumclaw Ins. Co. 145 Idaho 6, State v. Allen, 144 Idaho 875.

SITTRE WAS ALREADY granted 717 days from Honorable Judge Simpson, on 2/14/11. So Sentencing Specialist contacted Bannock County Jail for any time Sittre spent on CR-09-12496, 154 days. Now Sittre applied for credit for time served on the credit for 34 days in Caribou County, which is to be calculated by IDAC. and is not.

ISSUES PRESENTED

Sittre has provided the issue at hand on appeal, she feels that her complaint was dismissed with haste, now that Sittre has given more facts and shown proof of miscalculation, the Honorable Courts hopefully will grant her Judgement, Relief.

STANDARD OF REVIEW

The Appellate Court defers to the Appellant's facts and substantial evidence where District court erred in dismissing Sittre's complaint, and new facts have changed this case, while legal conclusions are reviewed de novo.

SITTRE feels that the district Court erred in granting the Respondents Summary Judgment since noone waited to give Sittre the benefit of the doubt with obtaining new evidence and simply believing she is "CRAZY", or wanting more "CREDIT," for time served.

SITTRE'S sentence is only 4 yrs, 2 + 2, according to her calculation time sheets, the calculated times are different each time, from Sentencing Specialist, Sittre should be released sooner than 10-23-13, her sentence will be served by Aug 24, 2013, with 34 days from Caribou County July 15, 2013, on CR-08-1579.


AGAIN Sittre received 410 days credited on 1-28-13, if Sittre tops out in 3-10-14, with 34 more days making her full term 2-4-14, again the 133 already calculated by Sentencing Specialist, would make her full term of Sept 22, 2013. This is all Sittre is asking for her time to be calculated properly.

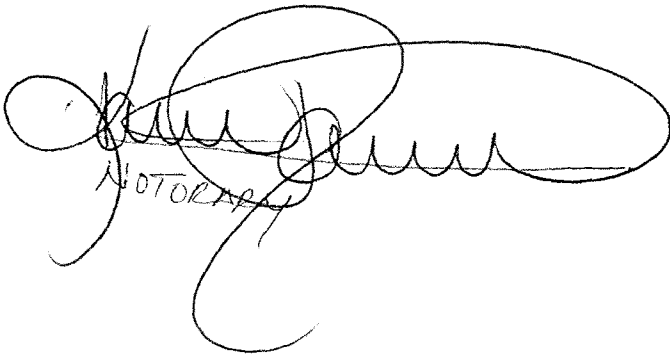
Sittre is serving her full term, and merely prays for her time properly credited, she is being forced to serve more time incarcerated which will create false imprisonment and cruel and unusual punishment, not to mention, the overcrowding within IDOC and Sittre is merely being ware housed in Gem County Jail, Emmett, Idaho. Sittre has served this time credited, and it should be properly calculated. Any further incarceration after properly calculating her sentence will be false imprisonment.

CONCLUSIONS

FOR ALL OF THE NEW FACTS AND EVIDENCE IN THIS CASE, AND FOR SITTRE'S RIGHTS TO BE PROTECTED BY THE STATE OF IDAHO, AND THE DISTRICT COURT, THIS COURT SHOULD GRANT SITTRE'S RELIEF.

RESPECTFULLY SUBMITTED THIS 20, day of June, 2013.


JOSEPHINE SITTRE
PLAINTIFF / APPELLANT
PRO SE


NOTARY

KATIE ROLLAND
Notary Public
State of Idaho

09/13/2013
EXPIRES

COPY
FILED
BANNOCK COUNTY
CLERK OF THE COURT

2013 MAY 31 PM 12:02

BY _____
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT,
OF THE STATE OF IDAHO, IN AND FOR BANNOCK COUNTY**

<p>STATE OF IDAHO,</p> <p>Plaintiff,</p> <p>v.</p> <p>JONNINE LISA SITTRE,</p> <p>Defendant.</p>	<p>Case No.: CR-2009-12496-FE</p> <p>DECISION ON (2nd) MOTION FOR CREDIT FOR TIME SERVED</p> <p>Hon. David C. Nye</p>
---	---

Defendant Jonnine Sittre, on January 20, 2013, filed a Motion for Credit for Time Served. The Court granted that motion and gave Sittre 410 days of credit for time spent incarcerated prior to sentencing in this matter. On March 11, 2013, Sittre filed a Motion for Credit for Time Served (2nd motion) that seeks credit for time spent incarcerated in Caribou County jail after this Court imposed sentence. Specifically, Sittre states that sentencing occurred on April 22, 2011, and that following sentencing she was transferred to Caribou County Jail from May 24, 2011, until June 27, 2011. On June 27, 2011, the Idaho Department of Corrections took her to prison.

A Rule 35 motion for credit for time served necessarily relies on I.C. § 18-309, which requires that the sentencing court give appropriate credit for prejudgment incarceration.¹

I.C. § 18-309 states:

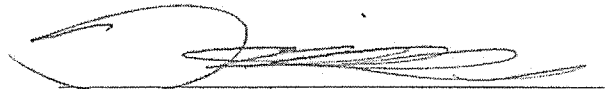
¹ *State v. Jakoski*, 132 Idaho 67, 966 P.2d 663 (Ct.App. 1998).

In computing the term of imprisonment, the person against whom the judgment was entered, shall receive credit in the judgment 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 and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

Thus, because of this statute, credit for time served is primarily an issue of law. However, the statute and the rule only apply to incarceration served prior to entry of judgment imposing incarceration. Here, the Court revoked probation and sent Sittre to prison on April 22, 2011. On that same date, the Court relinquished jurisdiction over Sittre to IDOC. This Court has no authority to grant Sittre credit for time served while she is under the jurisdiction of IDOC. This Court did not send her to the Caribou County jail. If she went there it was because IDOC put her there. Any time spent in Caribou County must be credited by IDOC and not by this Court. Therefore, the 2nd Motion for Credit for Time Served is denied in that this Court lacks jurisdiction to grant the motion.

IT IS SO ORDERED.

DATED May 31, 2013.



DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of May, 2013, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Prosecutor

- U.S. Mail
- Hand Deliver
- Fax:
- Courthouse Box
- Email:

John Souza

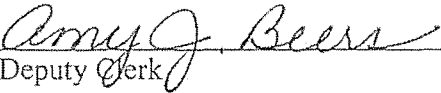
- U.S. Mail
- Hand Deliver
- Fax:
- Courthouse Box
- Email:

Records Administrator

- U.S. Mail
- Hand Deliver
- Fax:
- Courthouse Box
- Email:

Jonnie Sittre
410 East First
Emmett, Idaho 83617

- U.S. Mail
- Hand Deliver
- Fax:
- Courthouse Box
- Email:


Deputy Clerk

479 days of local time served as of February 14, 2011.³

Sittre has now filed a second motion for credit for time served.⁴ Attached to her supporting affidavit is a letter from the Caribou County, Idaho Sheriff's Office, which attests to Sittre's incarceration in Caribou County for a total of thirty-four (34) days, from May 24, 2011 through June 27, 2011.⁵ Sittre requests that she be credited upon her sentence with the thirty-four days she served in Caribou County.⁶

On November 10, 2008, this Court originally sentenced Sittre to the custody of the Idaho State Department of Correction for a fixed and determinate period of two years, together with an indeterminate period of two years.⁷ Sittre's sentence was suspended and she was placed on probation for a period of five years.⁸ On February 14, 2011, following numerous violations of Sittre's probation, this Court re-imposed Sittre's sentence on February 14, 2011.⁹ The Court retained jurisdiction over Sittre for a period of three-hundred and sixty-five days.¹⁰ Thereafter, on July 18, 2011, at the recommendation of the Classification Committee of the Idaho Department of Corrections, this Court relinquished jurisdiction over Sittre.¹¹

Any period of time Sittre served after imposition of the Court's retained jurisdiction is not
*I ASKED FOR MY JURISDICTION TO BE DROPPED / I DID NOT FAIL IT! I ASKED
SO I WOULD NOT BE DUEL STATUS AND I WOULD BE ABLE TO BE MOVED OUT OF
PRISON, TO WORK FULL*

³ Order re: Credit for Time Served, *State v. Sittre*, Bingham County case no. CR-2008-1579 (filed September 28, 2011).

⁴ Motion for Credit for Time Served, *State v. Sittre*, Bingham County case no. CR-2008-1579 (filed March 14, 2013) (hereinafter "**Sittre's Second Motion**").

⁵ Affidavit of Defendant, *State v. Sittre*, Bingham County case no. CR-2008-1579 (filed March 14, 2013) (hereinafter the "**Sittre Affidavit**"), at attachment, pp. 2-3.

⁶ Sittre Affidavit, at pp. 1-2.

⁷ Minute Entry, *State v. Sittre*, Bingham County case no. CR-2008-1579 (filed November 12, 2008).

⁸ *Id.*, at p. 2.

⁹ Order of Retained Jurisdiction Order Revoking Probation, *State v. Sittre*, Bingham County case no. CR-2008-1579 (filed February 16, 2011).

¹⁰ *Id.*, at p. 1.

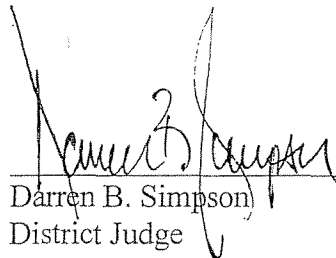
¹¹ See: *Relinquishment Order*.

considered “local time.” Instead, it is considered time served under the jurisdiction of the Idaho Department of Corrections. Therefore, if Sittre is entitled to credit for time served following the retention of this Court’s jurisdiction over her, such credit calculation must be made by the Idaho Department of Corrections.

For these reasons, Sittre’s Second Motion, for credit for time served, is hereby **denied**.

IT IS SO ORDERED.

DATED this 29th day of May 2013.



Darren B. Simpson
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true, and correct copy of the foregoing Order Denying Defendant's Successive Motion for Credit for Time Served was personally delivered, sent by facsimile, or mailed by first-class mail with prepaid postage this 29 day of May 2013, to:

Cleve Colson Esq.
Bingham County Prosecuting Attorney
Bingham County Courthouse
501 North Maple, #302
Blackfoot, Idaho 83221-1700

U.S. Mail Courthouse Box Facsimile

John C. Souza, Esq.
Attorney at Law
P.O. Box 6359
Pocatello, ID 83205

U.S. Mail Courthouse Box Facsimile

Ms. Jonnine Sittre
IDOC No. 27526
13200 S. Pleasant Valley Rd.
Kuna, ID 83634

U.S. Mail Courthouse Box Facsimile

SARA STAUB, DISTRICT CLERK

By: 
Deputy Clerk

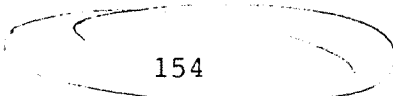
INMATE COPY

IDAHO DEPARTMENT OF CORRECTION
OFFICIAL TIME CALCULATION REPORT

COMMITMENT NAME: SITTRE, JONNINE LISA
LAST DATE CALCULATED: 09/28/2011 SEX: F

IDOC NUMBER: 27526
PAGE: 1 OF 1

CASE NUMBERS	CR08-1579	CR09-0012496
SENTENCE NUMBER	6	7
COUNTY	BINGHAM	BANNOCK
CRIME	BURGLARY	DRIV INFLNCE
COUNTS (IDENTICAL TERMS)	1	1
DATE OF CRIME		05.29.2009
MINIMUM SENTENCE	2- 0- 0	2- 0- 0
MAXIMUM SENTENCE	4- 0- 0	4- 0- 0
DATE OF SENTENCE	02/14/2011	04/25/2011
SENTENCE EFFECTIVE DATE		
CC/CS TO SENTENCE	I	CC 6
INDETERMINATE BEGIN DATE	10/24/2011	11/22/2012
JURISDICTION BEGINS	06/27/2011	
JURISDICTION ENDS	06/26/2012	
JURISDICTION QUASHED	Y	
JAIL CREDITS	479	154
PAROLE ELIGIBLE	10/24/2011	11/22/2012
FULL TERM EXPIRATION	10/23/2013	11/21/2014



CC = Concurrent, CS = Consecutive, CL = Consecutive to All

REMARKS:

SENTENCE 6 02.17.11RS*/07.18.11 REVOKED RIDER+07.20.11RS.
/07.20.11 J-AUDIT.BP/09.28.11 CREDIT ORDER.RS.BP
SENTENCE 7 05.03.11RW.*/06.29.11 J-AUDIT.BP

STATUS PERIODS:

START	LENGTH	TYPE
06/27/2011	149	Present at Facility *
02/14/2011	133	SENTENCE DATE



Caribou County Sheriff's Office

Days Served Report

<u>Inmate Name</u>	<u>Sex</u>	<u>Race</u>	<u>From</u>	<u>To</u>	<u>Days</u>	<u>Cumm</u>
Sittre, Jonnine L	F	I	05/24/11	06/27/11	34	34

Total Inmates: 1

Total Inmate Days Served: 34

Report Includes:

All dates between `05/01/11` and `06/30/11`, All arrest types, All agencies, All booking types, All institutional classes, All security classes, All judicial statuses, All inmate name IDs matching `26985`, All courts, All statutes, All offenses, All crime classifications

EXIBIT C

Idaho Dept of Correction
Central Records
1299 North Orchard Suite 110
Boise, Idaho 83706

Date: June 17, 2013

Jonnine Sittre, #27526

Subject: Credit for time while in Caribou County

Ms. Sittre,

You were sentence to the department of correction on your Bingham County case on 02.14.2011 and on 04.25.2011 on your Bannock county case. Any time spent in any county jail since those date are considered time being served on your sentence and cannot be given as pre-sentence credit as it after sentencing. The date you reference are days being served on your sentences.



L. R. Wilmoth
Sentencing Specialist
208-658-2050
208-327-7445 (fax)

CENTRAL RECORDS
SENTENCING SPECIALIST

6/12/13

RECEIVED
JUN 17 2013
CENTRAL RECORDS

RE: TIME CALCULATION / 34 days credit

Dear Sentencing Specialist;

I AM WRITING TO ASK IF THE 34 days
I SERVED IN CARIBOU COUNTY, 5/23/11 - 6/27/11
WERE CALCULATED TOWARD MY SENTENCE.

Thank you for your time.

Respectfully



JONNING SITTRE 27526
410 E. FIRST
EMMETT, IDAHO
- 83617 -

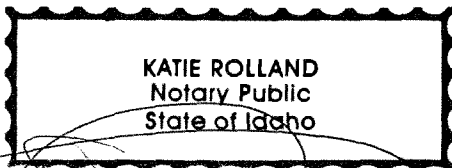
CERTIFICATE OF SERVICE

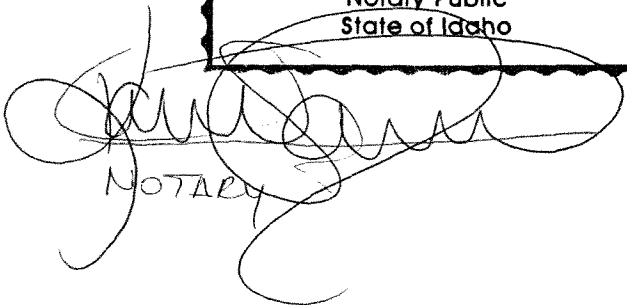
I, JONNINE SITTRE, Petitioner - Appellant
Pro se, for Appellants Reply Brief, have
sent the copies of the foregoing to all par-
-ties involved:

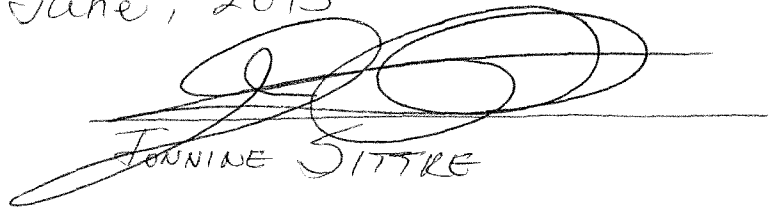
Idaho Supreme Court
Court of Appeals
STEPHAN W. KENYON
Clerk of the Courts
P.O. Box 83720
Boise, Idaho - 83720 - 0101

WILLIAM M. LOOMIS ISB# 4132
Attorney for Respondents
Department of Corrections
1299 N. Orchard, Suite 110
Boise, Idaho - 83706 -

dated this 20 day of June, 2013




NOTARY


JONNINE SITTRE

09/13/2013
EXPIRES