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State v. Olsen Appellant's Brief Dckt. 41569

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 41569
Plaintiff-Respondent,)	
v.)	CANYON COUNTY NO.
)	CR 2005-36734
CHESTER LEE OLSEN, aka)	
CHET OLSEN, PHILLIP)	APPELLANT'S BRIEF
OLSEN, NEIL OLSEN, JUSTIN)	
OLSEN, PHILLIP OLSEN NEIL,)	
DARRELL DUANE DYER,)	
DARRELL DYER, TOM SMITH,)	
BILLY ROY NELSON)	
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

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District Judge

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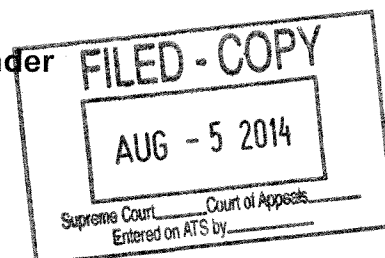


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STATEMENT OF THE CASE

Nature of the Case

Chester Olsen appeals, contending that the district court erred when it denied his motion for credit for time served based on its conclusion that there was no evidence that his incarcerations were attributable to this case. He asserts that the district court's factual findings were clearly erroneous and that this case should be remanded for clarification on relevant points of fact and, upon clarification of the record, a proper calculation of the credit to which he is entitled.

Statement of the Facts and Course of Proceedings

In 2008, in Canyon County, Mr. Olsen was sentenced in this case, following a guilty plea to grand theft by possession of stolen property, to a unified term of ten years, with four years fixed. (Supp. R., p.72.)¹ Execution of that sentence was suspended for a period of probation. (Supp. R., p.72.)

Mr. Olsen was subsequently arrested in Cassia County on January 31, 2010, for delivery of a controlled substance. (R., p.15.) A motion for probation violation was filed in the Canyon County case based, in part, on the fact that he received new charges in Cassia County. (Supp. R., pp.75-79.) A warrant was issued on March 3, 2010, in the Canyon County case based on that motion for probation violation. (Supp. R., pp.105-06.) On February 1, 2011, Mr. Olsen moved to quash the warrant in the Canyon County

¹ Since the district court indicated that it had reviewed the court's file for the Canyon County case, Mr. Olsen has, contemporaneously with this brief, filed a motion for this Court to take judicial notice of the appellate record from a prior appeal of the Canyon County case (Docket No. 40345). Citations to that record will be referred to as "Supp. R."

case, on the basis that he was already in custody, participating in a rider program.² (Supp. R., pp.80-81.) There is no indication that the district court actually ruled on Mr. Olsen's motion to quash the warrant, nor does it appear that it ever revoked Mr. Olsen's probation at that time. (See *generally* Supp. R.; R., p.3 (register of actions showing no documents filed during the relevant time period).)

A report on Mr. Olsen's rider program was filed in the Cassia County case on March 30, 2011, and a rider review hearing was held on April 19, 2011. The Cassia County jail records indicate that Mr. Olsen was booked into that facility under both the Cassia County and Canyon County case numbers on April 6, 2011, and was released on April 19, 2011. (R., p.15.) It is unclear whether the Canyon County warrant was served at that time. (See *generally* R., Supp. R.; *but see* Supp. R., p.108 (return of service on the Canyon County warrant dated July 27, 2012).) Mr. Olsen was placed on probation after he completed the rider program. See *State v. Olsen*, 2012 Unpublished Opinion No. 632, p.1 (Ct. App. Sept. 12, 2012).

Several months later, officers were performing a walkthrough of a bar in Minidoka County, looking for probationers, when they encountered Mr. Olsen. (Supp. R., p.86.) They ultimately arrested him after finding he was in possession of a controlled substance. (Supp. R., p.86.) That led to new charges being filed in Minidoka County for possession of methamphetamine. New reports of probation violation were also filed in the Canyon County and Cassia County cases alleging that Mr. Olsen had violated the terms of his respective probation agreements by receiving new charges and by entering

² That rider program appears to be related to the district court's decision to retain jurisdiction in the Cassia County case. See *State v. Olsen*, 2012 Unpublished Opinion No. 632, p.1 (Ct. App. Sept. 12, 2012) (opinion in the appeal challenging the sentence imposed in the Cassia County case, noting that the district court retained jurisdiction in the Cassia County case).

an establishment with alcohol sales as its primary source of revenue. (See, e.g., Supp. R., pp.84-85.)

Ultimately, Mr. Olsen admitted the probation violations and pled guilty to the new possession charge. (See, e.g., Supp. R., pp.119-20.) Mr. Olsen's probations were revoked and his sentences were executed on August 17, 2012. (See Supp. R., pp.119-22.) All of those decisions were affirmed on appeal. *State v. Olsen*, 2013 Unpublished Opinion No. 516 (Ct. App. May 29, 2013) (opinion in the Canyon County case); *State v. Olsen*, 2012 Unpublished Opinion No. 632 (Ct. App. Sept. 12, 2012) (opinion in the Cassia County case); *State v. Olsen*, 2012 Unpublished Opinion No. 628 (Ct. App. Sept. 6, 2012) (opinion in the Minidoka County case).

Subsequently, Mr. Olsen filed a motion for credit for time served in the Canyon County case, claiming credit for two periods of time: (1) the period of time following his initial arrest in the Cassia County case through his ultimate release back onto probation (January 31, 2010, through April 19, 2011); and (2) the period of time following his most recent arrest through revocation of his probation (July 2, 2011, through August 17, 2012). (R., p.11.) In support of that motion, he filed the booking records from the Cassia County jail. (R., p.15.) The district court not only denied his motion for additional credit, but actually reduced the amount of time for which Mr. Olsen was to receive credit. (R., p.16.)

Mr. Olsen filed a motion to reconsider that decision. (R., pp.18-19.) He scaled back his request, asserting that he had been held on the Canyon County case between April 6, 2011, and April 19, 2011, and that, on July 3, 2011, he had been arrested on a

warrant or was subjected to a hold arising out of the Canyon County case.³ As a result, he claimed he was, at least, entitled to credit for the thirteen days between April 6, 2011, and April 19, 2011, as well as for all the time served following his most recent arrest on July 2, 2011. (R., pp.19, 22.)

The district court denied that motion. (R., pp.24-26.) Specifically, it stated that “there is nothing in the file that would indicate the Defendant was arrested on this case on either April 6, 2011[,] or on July 3, 2011[,] or that there was any kind of ‘hold’ placed on the Defendant as a result of this case.” (R., p.25.) Mr. Olsen filed a notice of appeal that was timely from the order denying his motion to reconsider the amount of credit for time served. (R., pp.28-31.)

³ Mr. Olsen stated that he was arrested on July 3, 2011, though the documents in the record indicate he was arrested on July 2, 2011. Additionally, in regard to his request for credit starting in July 2011, Mr. Olsen went on to assert that “[t]he offense for which Petitioner was placed under arrest in Cassia County was [the Cassia County and Minidoka County cases], and he was sentenced upon those crimes.” (R., p.19.)

ISSUE

Whether the district court erred by denying Mr. Olsen's motion for credit for time served.

ARGUMENT

The District Court Erred By Denying Mr. Olsen's Motion For Credit For Time Served

Idaho Code § 19-2603 provides that credit shall be given following violation of parole, starting with the date a warrant for arrest is served. This statute has been applied in probation violation cases as well as parole violation cases. See, e.g., *State v. Kesling*, 155 Idaho 673, 677-78 (Ct. App. 2013) (“Generally, I.C. § 19-2603 governs credit for time served as it relates to the revocation of probation.”) In regard to requests for credit for time served where the record is not clear on the relevant facts, the Court of Appeals has held that, where the defendant’s claim for credit for time served potentially had merit, but the limited record on appeal was insufficient to conclude whether or not he was actually entitled to additional credit, the order denying the motion for credit should be vacated and the case remanded for reconsideration in light of a complete record. *State v. Chilton*, 116 Idaho 274, 276 (Ct. App. 1989).

In this case, the district court determined that there was nothing in the record that supported Mr. Olsen’s assertion that he was being held, pursuant to a warrant or other type of hold, on the Canyon County Case. (R., p.25.) That determination is clearly erroneous. See *Lovitt v. Robideaux*, 139 Idaho 322, 325 (2003) (holding that a district court’s finding of fact is clearly erroneous when it is not supported by substantial, competent evidence). The Cassia County jail records, which Mr. Olsen included with his initial motion, clearly state that, on April 6, 2011, Mr. Olsen was booked into that facility under the Canyon County case number.⁴ (R., p.15.) Those jail records also state that Mr. Olsen was not released in that instance until April 19, 2011. (R., p.15.)

⁴ The record does not reveal whether a warrant was served in the Canyon County case at this time, or whether he was booked under some other justification. (See generally R., Supp. R.)

The fact that Mr. Olsen was arrested and booked into jail on the Canyon County case while there was a valid warrant pending for his arrest in that case strongly implies the service of a warrant occurred at least by April 6, 2011, since “[t]he warrant shall be executed *by the arrest* of the defendant.” I.C.R. 4(h)(3) (emphasis added). That Rule also provides that the officer need not have the warrant in his possession, if he informs the defendant of the offense charged and the fact that the warrant was issued.⁵ *Id.* Therefore, the fact that Mr. Olsen was arrested in this case while a valid warrant was issued suggests that the warrant was served pursuant to I.C.R. 4(h)(3), and in that case, Mr. Olsen would be entitled to credit from the date that warrant was served. *Kesling*, 155 Idaho at 677-78.

I.C.R. 4(h) goes on to require the officer serving the warrant of make a return of service to the magistrate court. I.C.R. 4(h)(5). There is a return of service related to this warrant, which is dated July 27, 2012. (Supp. R., p.108.) However, that does not make any sense given the factual evolution of this case. The warrant in question was issued on March 3, 2010, based on a report of violation of his probation. (Supp. R., pp.105-06.) The related report of probation violation was filed on February 26, 2010. (Supp. R., p.75.) Given that Mr. Olsen was returned to probation by April 19, 2011, at the latest, and that he had already moved to quash that warrant, it appears that the motion for probation violation and the motion to quash were adjudicated or otherwise deemed resolved as of April 19, 2011. As such, the purported service of that warrant a year later, and two years after it was issued, is inconsistent with the other facts in the record.

⁵ Based on that provision of I.C.R. 4(h)(3), the record actually suggests that Mr. Olsen was served with the warrant as early as February 1, 2011 (when he filed a motion to quash that warrant (Supp. R., pp.80-81)).

At any rate, these disparities in the record bring this case under *Chilton*. The record suggests that Mr. Olsen may be entitled to credit for time served as of April 6, 2011, at the latest, but the limited record on appeal is not sufficiently clear to resolve that issue one way or the other. *Compare Chilton*, 116 Idaho at 276. All that is clear is that the district court made a clearly erroneous determination about the facts in this case. Therefore, this Court should vacate the order denying the motion for credit for time served and remand this case for clarification of the record, and thereafter, award of any and all credit to which Mr. Olsen is properly entitled.

CONCLUSION

Mr. Olsen respectfully requests that this Court vacate the district court's order denying his motion for credit for time served and remand this case for a proper calculation of credit for time served.

DATED this 5th day of August, 2014.



BRIAN R. DICKSON
Deputy State Appellate Public Defender

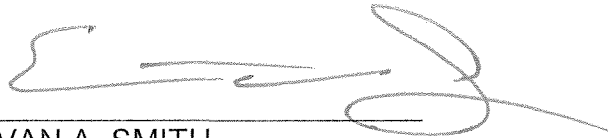
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of August, 2014, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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INMATE #36285
SICI
PO BOX 8509
BOISE ID 83707

MOLLY J HUSKEY
DISTRICT COURT JUDGE
E-MAILED BRIEF

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