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State v. Olivas Appellant's Brief Dckt. 41804

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) NO. 41804
)
 v.) BONNEVILLE COUNTY
) NO. CR 2005-6345
)
 JAKE ALLEN OLIVAS,) APPELLANT'S BRIEF
)
 Defendant-Appellant.)
)
 _____)

COPY

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNEVILLE

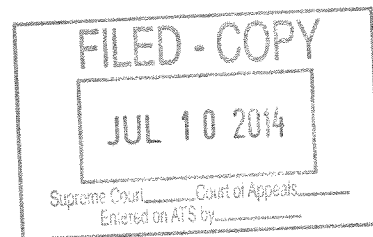
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STATEMENT OF THE CASE

Nature of the Case

Jake Allen Olivas filed, *pro se*, an “Illegal Sentence Motion,” which the district court denied. On appeal, Mr. Olivas asserts that the district court erred when it denied his Illegal Sentence Motion.

Statement of the Facts and Course of Proceedings

Pursuant to a plea agreement, Mr. Olivas pleaded guilty to burglary, felony, in violation of Idaho Code § 18-1401, and the district court imposed a unified sentence of ten years, with two years fixed. (No. 32730 R., pp.66-67, 73-75.)¹ The judgment specified that Mr. Olivas was to receive credit for any jail time served, to be applied at the end of the fixed sentence. (R., p.35.)² Mr. Olivas then filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. (No. 32730 R., pp.76-77, 85-86.) Mr. Olivas filed an appeal, and the Idaho Court of Appeals, in an unpublished opinion, affirmed the judgment of conviction and sentence and the order denying the Rule 35 motion. *State v. Olivas*, No. 32730, 2006 Unpublished Opinion No. 646 (Idaho Ct. App. Sept. 28, 2006).

Mr. Olivas subsequently filed, *pro se*, an “Illegal Sentence Motion.” (R., pp.10-23.) In the motion, Mr. Olivas asserted that he “has been fraudulently robbed of (202) days of parole time.” (R., pp.11-12.) He asserted that I.C. §§ 18-309, 20-225 and 20-228 were unconstitutional “by not accrediting [to a defendant] all of the time served while on probation, parole, jail, and prison time, since the time of arrest on the charge(s), [for which] he or she has been convicted.” (R., pp.10-11.) “The parolee or

¹ The Idaho Supreme Court has taken judicial notice of the record and transcript filed in Mr. Olivas’ prior appeal, No. 32730. (Order Taking Judicial Notice, Mar. 6, 2014.)

probationer while under supervision is no less a prisoner than that of a prisoner physically confined.” (R., p.11.) Mr. Olivas asserted that a judgment is a contract, and the statutes at issue violated Article I, Section 10 of the United States Constitution and Article I, Section 16 of the Idaho Constitution because they impaired the contractual obligations imposed by his judgment. (See R., pp.11-13.) “It is clearly established that time completed under supervision is without a doubt time served. To hinder, disqualify, or just take away said time constitutes ‘incarceration without judicial process [which] is illegal.’” (R., p.14.) Thus, Mr. Olivas requested that the district court “order every day served incarcerated either physically behind bars, on probation or parole time be credited by I.D.O.C. and any entity involved recognize fulfillment of Petitioner’s sentence in accordance with all Constitutional Rights; State and Federal.” (R., p.23.)

The district court later issued an Opinion and Order Denying Defendant’s Motion to Correct Illegal Sentence. (R., pp.35-41.) The district court treated Mr. Olivas’ motion as an Idaho Criminal Rule 35 motion to correct an illegal sentence, because “Defendant requests that this Court review a sentence for illegality and that request falls under Rule 35 of the Idaho Criminal Rules.” (R., pp.36-37.) The district court then determined that it “does not need to decide whether the judgment was a contract because the cited Idaho statutes would not interfere with the contractual relationship if it existed.” (R., p.38.) According to the district court, because I.C. §§ 18-309, 20-225 and 20-228 were in effect as controlling law when Mr. Olivas was sentenced, they defined the terms of the judgment. (R., p.38.) The relevant portions of the statutes at issue either had not changed since Mr. Olivas’ was sentenced, or the changes (to I.C. § 20-225) would not have impacted his sentence. (R., p.38.)

² All citations to “R.” refer to the Limited Clerk’s Record prepared for this appeal.

The district court also addressed “what appears to be the substance of Defendant’s claim, i.e. the issue of whether the statutes are unconstitutional for not providing credit for all time under supervision.” (R., p.38.) Following the reasoning of the United States District Court for the District of Idaho in *Reinhart v. Johanson*, No. CV-05-362-E-BLW, 2007 WL 1959064 (D. Idaho July 3, 2007), the district court held “that Idaho Code §§ 18-309, 20-225, 20-228 violate neither the United States nor the Idaho Constitutions.” (R., pp.38-39.) Thus, the district court denied Mr. Olivas’ motion. (R., p.40.)

Mr. Olivas then filed, *pro se*, a timely Notice of Appeal from the district court’s Opinion and Order Denying Defendant’s Motion to Correct Illegal Sentence. (R., pp.71-80.)

ISSUE

Did the district court err when it denied Mr. Olivas' Illegal Sentence Motion?

ARGUMENT

The District Court Erred When It Denied Mr. Olivas' Illegal Sentence Motion

Mr. Olivas asserts that the district court erred when it denied his Illegal Sentence Motion, because I.C. §§ 18-309, 20-225, and 20-228 are unconstitutional.

As discussed above, the district court treated the Illegal Sentence Motion as an Idaho Criminal Rule 35 motion to correct an illegal sentence. (See R., pp.36-37.) However, the Illegal Sentence Motion, in substance, is better characterized as a request for credit for time served. In the motion, Mr. Olivas asserted that he “has been fraudulently robbed of (202) days of parole time” (R., pp.11-12), and requested “that this Court order every day served incarcerated either physically behind bars, on probation or parole time be credited by I.D.O.C.” (R., p.23.) Thus, in substance Mr. Olivas requested that the district court correct the computation of credit for time served on parole. “Whether the district court properly applied the law governing credit for time served is a question of law over which we exercise free review.” *State v. Covert*, 143 Idaho 169, 170 (Ct. App. 2006).

However, credit for time served on parole is not available as relief under Idaho Criminal Rule 35, because Rule 35(c) only provides for motions “to correct a court’s computation of credit for time served, granted pursuant to Idaho Code Section 18-309 or 19-2603.” See I.C.R. 35(c). Credit for time served on parole is not granted pursuant to those statutes, but may be granted pursuant to I.C. § 20-228. See *Gibson v. Bennett*, 141 Idaho 270, 273-74 (Ct. App. 2005) (“When an inmate’s parole is revoked, the time spent on parole does not count towards the completion of an inmate’s sentence, unless the Commission for Pardons and Parole decides in its discretion that the time should be so counted.”).

Further, “a petition for writ of habeas corpus is an appropriate mechanism for challenging an alleged impropriety or error in the [Idaho Department of Correction’s] computation of a prisoner’s sentence.” *Mickelsen v. Idaho State Corr. Inst.*, 131 Idaho 352, 353, 355 (Ct. App. 1998) (citing *Bates v. Murphy*, 118 Idaho 239, 243 (1990); *Calkins v. May*, 97 Idaho 402 (1976); *State v. Vega*, 113 Idaho 756, 758 (Ct. App. 1987)). A prisoner “may file a petition for writ of habeas corpus to request that a court inquire into state or federal constitutional questions concerning . . . [m]iscalculation of his sentence.” I.C. § 19-4203(2)(c). Habeas corpus proceedings are separate from criminal proceedings and civil in nature. *State v. Creech*, 132 Idaho 1, 9 n.1 (1998). Mr. Olivas filed the Illegal Sentence Motion in his criminal case. (See R., p.10.)

Mindful of the above authorities, Mr. Olivas asserts that the district court erred when it denied his Illegal Sentence Motion, because I.C. §§ 18-309, 20-225, and 20-228 are unconstitutional.³ Idaho’s appellate courts have previously held that Section 18-309 and Section 20-228 are constitutional. See *State v. Hale*, 116 Idaho 763 (Ct. App. 1989) (holding that the application of I.C. § 18-309 did not violate a defendant’s equal protection or due process rights); *Flores v. State*, 109 Idaho 182 (Ct. App. 1985)

³ Section 18-309 provides that, for time served on a sentence of incarceration after the entry of judgment, “[t]he 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 term during which he was at large must not be computed as part of such term.” I.C. § 18-309.

Section 20-225 currently requires “[a]ny person under state probation or parole supervision . . . to contribute not more than seventy-five dollars (\$75.00) per month as determined by the board of correction” as payment for costs of supervision. I.C. § 20-225. At time of Mr. Olivas’ sentencing, the statute required payments of not more than fifty dollars (\$50.00) per month. See 2005 Idaho Sess. Laws Ch. 68.

Section 20-228 provides that, if a parolee is found to have violated the conditions of parole, the “person so recommitted must serve out the sentence, and the time during which such prisoner was out on parole shall not be deemed a part thereof; unless the commission, in its discretion, shall determine otherwise” I.C. § 20-228.

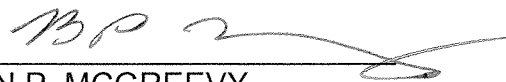
(holding that I.C. § 20-228 does not violate the separation of powers); *see also Doan v. State*, 132 Idaho 796 (1999) (holding that I.C. § 19-2513, by analogy to I.C. § 20-228, does not implicate the separation of powers).

However, whether the statutes at issue here are unconstitutional because they impair contractual obligations appears to be a matter of first impression. Both the United States Constitution and Idaho Constitution prohibit laws impairing the obligation of contracts. U.S. Const. Art. I, § 10; Idaho Const. Art. I, § 16. By not crediting Mr. Olivas for the requested 202 days of parole time, the statutes at issue impair the contractual obligations imposed by his judgment. (See R., pp.11-13.) This is because time spent on parole is time served, and taking away credit for that time is illegal. (See R., pp.11-14.) Thus, I.C. §§ 18-309, 20-225, and 20-228 are unconstitutional. (See R., pp.11-13.) The district court erred when it denied Mr. Olivas' Illegal Sentence Motion.

CONCLUSION

For the above reasons, Mr. Olivas respectfully requests that this Court reverse the district court's order denying his Illegal Sentence Motion, and remand his case for the entry of an order awarding him credit for 202 days served on parole.

DATED this 10th day of July, 2014.



BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of July, 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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JOEL E TINGEY
DISTRICT COURT JUDGE
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EVAN A. SMITH
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BPM/eas