

10-14-2014

Cummings v. Idaho Com'n of Pardons & Parole Appellant's Brief Dckt. 42367

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Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

GERALD B. CUMMINGS,)

Appellant,)

vs.)

IDAHO COMMISSION OF PROBATION &)
PAROLE,)

DAVID ATKINSON, OLIVIA CRAWIN,)

Respondent.)

Case No. 42367-2014

APPELLANT'S BRIEF

Appeal from the District Court of the Fourth Judicial District
for ADA County.

The Honorable DANIEL C. HURIBUTT, JR., District Judge presiding.

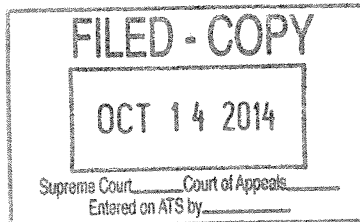


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CASES

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STATUTES

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STATEMENT OF THE CASE

A. Introduction

B. Statement of Facts and Course of Proceedings

A.) GERALD B Cummings, APPEALS FROM THE DISTRICTS COURT'S ORDER DENYING HIS WRIT OF HABEAS CORPUS. HIS WRIT WAS CHALLENGING THE DEPARTMENT OF CORRECTIONS CALCULATIONS OF HIS TIME, THAT WAS WRONGFULLY USED BY MEMBERS OF THE PAROLE COMMISSION. THE COURT ERRED IN NOT GRANTING HIM HIS WRIT.

B.) ON JUNE 8, 2009, MR. CUMMINGS WAS SENTENCED TO A TERM OF SEVEN YEARS, WITH ONE & ONE-HALF YEARS (1.5) FIXED FOR POSSESSION OF CONTROLLED SUBSTANCE, METHAMPHETAMINE. (CR., P. 10) HE RECEIVED 95 DAYS OF PREJUDGEMENT CREDIT FOR TIME SERVED, MAKING THE EFFECTIVE SENTENCING DATE MARCH 5, 2009. (CR., P. 17) THUS, HIS SENTENCE EXPIRES ON MARCH 5, 2016

IN SUPPORT OF THE WRIT OF HABEAS CORPUS, MR. CUMMINGS ATTACHED A TIME CALCULATION REPORT FROM

the Department of Corrections indicating that his full-term release date was December 13, 2016, rather than March 5, 2016. (CR., P.17)

MR. Cummings also submitted documentation indicating that he was paroled on October 1, 2010. (CR., P.19) A report of parole violation was filed on October 4, 2012, he was arrested on an Agent's warrant on October 1, 2012. (CR., P.19) MR. Cummings has been arrested on a new charge of possession of a controlled substance on September 29, 2012 and was sentenced on that new charge on December 20, 2012. (CR., P.27) He was found guilty of the parole violation November 14, 2012 (CR., P.24)

Finally, MR. Cummings submitted a time calculation report prepared on May 15, 2013 (CR., P.34) This document indicated that his sentence began on June 8, 2009, that he received 95 days of jail credits, forfeited 731 days of his time of parole, and that his full-term expiration was December 14, 2018.

The District Court denied MR. Cummings writ of Habeas Corpus by granting the Respondents Summary Judgment. MR. Cummings Appealed.

ISSUES PRESENTED ON APPEAL

- 1) THE District COURT ERRED by granting the Respondents Summary Judgment.
- 2) That the time calculation that the Dept. of Corrections has provided, HAS effectively CREATED A Double Jeopardy SITUATION AGAINST MR. Cummings.

ARGUMENT

A. Introduction The District Court ERRED by DENYING MR. CUMMINGS Writ of Habeas Corpus.

MR. CUMMINGS APPEALS FROM THE DISTRICT COURT'S ORDER FOR SUMMARY JUDGMENT, FOR HIS CHALLENGING THE DEPARTMENT OF CORRECTIONS CALCULATION OF HIS TIME.

B. ARGUMENT I :

MR. CUMMINGS ASSERTS THAT THE DISTRICT COURT ERRED AND THAT THE DEPARTMENT OF CORRECTIONS HAS MISCALCULATED HIS TIME. THIS MISCALCULATED TIME IS WHAT THE PAROLE COMMISSION IS WORKING BY AS TO CERTAIN DATES. MR. CUMMINGS ACKNOWLEDGES THAT HE IS NOT ENTITLED TO CREDIT FOR TIME SERVED WHILE ON PAROLE, THE PAROLE COMMISSION HAS THE DISCRETION TO AWARD SUCH TIME. SEE I.C. § 20-228. EVEN SO, HIS TIME HAS BEEN MISCALCULATED. AS SET FORTH IN THE STATEMENT OF FACTS, MR. CUMMINGS WAS SENTENCED ON JUNE 8, 2009, AND RECEIVED 95 DAYS OF CREDIT FOR TIME SERVED. THE DEPARTMENT OF CORRECTIONS

ACKNOWLEDGES this in its time calculation. (Cr., P. 17)
THE SENTENCE IMPOSED WAS 7 YEARS. (Cr., P. 10)
TAKING INTO ACCOUNT THE 95 DAYS, MR. CUMMINGS'
INITIAL FULL-TERM RELEASE DATE SHOULD HAVE BEEN
MARCH 5, 2016. ACCORDING TO THE DEPARTMENT,
MR. CUMMINGS FORFEITED 731 DAYS WHILE ON
PAROLE (Cr., P. 34) THUS, EVEN ASSUMING THAT
MR. CUMMINGS DOES NOT GET ANY CREDIT FOR HIS
TIME SPENT ON PAROLE & HE HAS FORFEITED
731 DAYS, HIS NEW FULL-TERM RELEASE DATE
SHOULD BE MARCH 6, 2018. MR. CUMMINGS
THEREFORE ASSERTS THAT THE DEPARTMENT HAS
MISCALCULATED HIS TIME AND THAT HIS DISTRICT
COURT ERRED.

C) ARGUMENT II

MR. CUMMINGS ASSERTS THAT MR. ATKINSON
WAS THE FIRST PERSON WITH THE IDAHO
COMMISSION OF PAROLE & PROBATION TO START THE
FALSE DOCUMENTATION (Cr., P. 6, 18, 19) WELL
BEFORE MR. CUMMINGS HAD EVER BEEN SEEN
BY THE PAROLE COMMISSION FOR HIS REVOCATION
HEARING. (Cr., P. 33).

The Departments of Corrections Central Records officer L.R. Wilmoth does not have any Judicial Authority to add any time to the tail end of MR. Cummings 2008-10587 case.

On 12/20/12, MR. Cummings was sentenced to a 4 year sentence, with 1 year fixed & 3 years indeterminate. (CR, P.27) MR. Cummings was credited with 81 days, (CR, P.17) This 81 days is calculated into the 1 year fixed portion with a remainder of 284 days of fixed time still to be served.

Thus, MR. Cummings 08-10587 case, fixed portion was satisfied by being released on parole 10-1-10. (CR, P.19) On 9-29-13 with MR. Cummings arrest and subsequent conviction, in case CR-2012-10984, The Records Department made the following statement on June 26, 2013, (CR, P.94) "consecutive means you have to serve

"consecutive means you have to serve the determinate part of your first sentence then the determinate part of your second sentence, then you serve the indeterminate part of each sentence the same way."

MR. Cummings had already started serving his

consecutive Fixed term as of 9/29/13, 81 Days
in Jail Custody & 284 Days in IDOC Custody,
and that term was completed 9-30-13, (CR, P. 97)
which MR. Cummings 08-10587 INDETERMINATE
time started back at being CREDITED.

Therefore, in the statement made in the
Memorandum Decision & Order RE: Respondents
motion for Summary Judgment, (CR, P. 114, 115)
The Court has clearly recognized Mr. Cummings plight
& apparently agrees that March 4, 2018 is
the correct full-term release date of CR-2008-
10587, But when it comes to CR-2012-10984,
The Court does not recognize that Mr. Cummings
has already served the 284 days (9 months)
that the Department of Corrections claims need
to be added to the tail end of CR-08-10587,
which then truly became a Double Jeopardy
Type Action and therefore is unconstitutional.

"In reviewing a petition for writ
of habeas Corpus to decide if the
writ should issued AND AN EVIDENTIARY
hearing be held, The Court must treat
All Allegations contained the petition
as true. MAHAFFEY V. STATE, 87 IDAHO

228, 392 P.2d 279 (1964). IN
ORDER FOR A COURT TO HAVE JURISDICTION
TO GRANT A WRIT OF HABEAS CORPUS,
IT MUST APPEAR A VIOLATION OF
CONSTITUTIONAL RIGHTS HAS OCCURED."
(CR., P. 57)

FURTHER MORE, MR. CUMMINGS HAS BEEN
REFUSED ACCESS TO IDOC POLICY 136 DEALING
WITH TIME CALCULATIONS DUE TO IT BEING A
SECURITY PROBLEM, EVEN THOUGH IT SHOULD
FALL UNDER THE FREEDOM OF INFORMATION
ACT, ALSO MR. CUMMINGS IS FURTHER
PREVENTED ANY ACCESS TO ID REPORTER, F. SUPP
S. CT. REPORTERS, ETC... (CR., P. 105) TO FURTHER
PROVIDE THIS COURT IN ITS DECISION MAKING
PROCESS. MR. CUMMINGS BEING INDULGENT DOES
NOT ALLOW HIM TO ACCESS COPY MAKING ABILITY
AT THE SUPREME COURT LAW LIBRARY AS AFFORDED
TO OTHER INMATES.

CONCLUSION

Therefore, appellant respectfully requests that this court [what court should do].

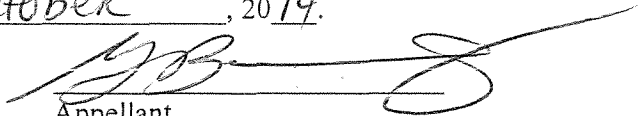
Grant his appeal by REVERSE, the states Summary Judgment, REMANDING BACK to district court to grant Mr. Cummings writ of habeas corpus.

To Instruct IDOC to Adjust his Full-Term RELEASE to correctly reflect MARCH, 2018 ON CASE 08-10587 AND ON CASE 2012-10984 TO reflect Full-Term Release MARCH 2021.

ORDER IDOC TO CEASE & Discontinue their method of Calculating A Persons time of A consecutive sentence AS the presently Do.

Any Further Action the Court may deem Necessary.


Respectfully submitted this 9 day of October, 2014.


Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 9 day of October, 2014, I mailed a true and correct copy of the APPELLANT'S BRIEF via prison mail system for processing to the United States mail system, postage prepaid, addressed to:

Deputy Attorney General
Criminal Division
P.O. Box 83720
Boise, ID 83720-0010


Appellant