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

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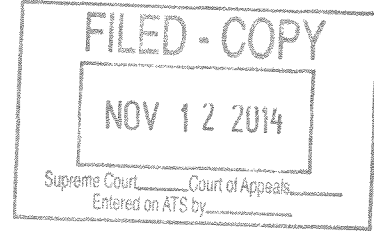
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IN THE SUPREME COURT OF THE STATE OF IDAHO

GERALD B. CUMMINGS,)
)
Petitioner/Appellant,)
)
v.)
)
IDAHO COMMISSION OF)
PROBATION AND PAROLE)
DAVID ATKINSON, OLIVIA)
R.AVEN,)
)
Respondents/Appellees)
_____)

Docket No. 42367-2014

DC Docket No. CVHC 2014-07680



BRIEF OF RESPONDENTS/APPELLEES

Appeal From the District Court of the
Fourth Judicial District of the State of Idaho,
In and For the County of Ada

HONORABLE DANIEL C. HURLBUTT

DISTRICT JUDGE

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State of Idaho

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STATEMENT OF THE CASE

A. Nature of the Case

This case involves the computation of consecutive indeterminate sentences and the proper method for crediting time served in county jail prior to the imposition of sentence. The Appellant (hereafter “Cummings”) asserts the district court erred when it found that the IDOC correctly computed his sentences resulting in a full term release date of December 14, 2021. Cummings argues that his full term release date should be in March 2021 instead. *Appellant’s Brief, p. 12.*

B. Proceedings Below

Cummings filed a petition for writ of habeas corpus on April 30, 2014, challenging the computation of his sentence. (R. 000003). The Respondents filed a Response and Motion for Summary Judgment on May 19, 2014. (R. 000055). The Court granted judgment in favor of the Respondents on June 7, 2014. (R. 000111). Cummings timely filed his Notice of Appeal on July 23, 2014. (R.000119)

C. Statement of the Facts

On June 8, 2009, Cummings was sentenced to a unified sentence of seven years, with one and one half years fixed and five and one half years indeterminate. (R. 000010-15). He was credited with ninety-five days of presentence jail credit in Twin Falls County Case No., CR 2008-10587. (R. 000010-15). He was paroled on October 1, 2010. While on parole, he committed a new felony. Cummings was convicted on December 20, 2012 in Twin Falls County Case No. CR 2012-10984, and sentenced to a unified sentence of four years with one year fixed. (R. 000027-31). He was credited with eighty-one days of pre-sentence jail credit. (R. 000027-31). Cummings’ parole was

revoked on April 15, 2013. (R. 000097). The parole commission forfeited 731 days Cummings spent on parole. (R. 000097).

The full term satisfaction date of both sentences, as calculated by the IDOC after adjusting for jail credits and revocation of the time spent on parole is December 14, 2021. (R. 000097). On the other hand, according to Cummings' calculations, he should complete both sentences in March, 2021. (R. 000008). Herein lies the dispute.

ISSUE PRESENTED

Cummings frames the issues on appeal as follows:

1. The District Court erred by granting the Respondents Summary Judgment.
2. That the time calculation that the Department of Correction has effectively created a double jeopardy situation.

The Respondents reframe the issue as follows:

Whether summary judgment was entered properly for the Respondents, given that Cummings' sentence calculation comported with existing law.

STANDARD OF REVIEW

In an appeal from a summary judgment dismissing a habeas corpus petition, the appellate court is bound by the same standard of review as the trial court. *Freeman v. Idaho Department of Correction*, 138 Idaho 872, 875, 71 P.3d 471, 474 (Ct. App. 2003). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Hays v. State*, 132 Idaho 516, 975 P.2d 1181 (Ct. App. 1999).

On appeal, the appellate court exercises free review in determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment

as a matter of law. *Edwards v. Conchemo, Inc.*, 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986).

ARGUMENT

Cummings' challenge to his sentence calculation is unsupported by existing law. Therefore, the district court did not err in granting summary judgment to the Respondents.

Idaho law is well settled on the issue of the calculation of consecutive sentences. The law is also clear on when credit for pre-judgment incarceration is to be applied to a sentence. Cummings does not challenge the general calculation of either of his sentences. He does not challenge the forfeiture of 731 days he spent on parole. He only challenges the interplay of his jail credit on his sentence calculation. This the genesis of his appeal.

A term of imprisonment for conviction of a felony most often consists of two parts; a fixed term of imprisonment (referred to as the determinate portion) and a subsequent indeterminate term where the offender becomes eligible for parole. *Idaho Code § 18-2513*.

“A prisoner must receive credit on a sentence for any period of incarceration prior to the entry of the judgment if such incarceration was for the offense for which the judgment was entered. This credit is given by subtracting the number of days credit from the end of the fixed term of the prisoner’s sentence, or from the final release date if no fixed term applies to the sentence.” *Fullmer v. Collard*, 143 Idaho 171, 172, 139 P.3d 773, 774 (Ct. App. 2006) and *Idaho Code § 18-309*.

When consecutive sentences have been imposed, a prisoner first serves the fixed term of the first sentence, then the fixed term of the second sentence, followed by the

consecutive indeterminate portions of each sentence. *Doan v. State*, 132 Idaho 796, 800, 979 P.2d 1154, 1158 (1999).

It is against this backdrop that Cummings' sentence calculation must be reviewed. Cummings was first convicted and sentenced for substance possession on June 8, 2009 (Twin Falls County Case No. 08-10587). He was sentenced to a one and one half year fixed term followed by a five and one half year indeterminate term for a unified sentence of seven years. Cummings was entitled to and received ninety-five days pre-sentence jail credit on this sentence.

Cummings was released on parole on October 1, 2010, having completed the fixed term of his sentence, which included the ninety-five days of jail credit. He violated parole by committing a new felony for substance possession (Twin Falls County Case No. 12-10984). The court imposed a unified sentence of four years with one year fixed, three years indeterminate with eighty-one days of jail credit. This second sentence was ordered to run consecutively to the sentence imposed in Twin Falls County Case 08-10587. As a result of this new felony conviction, Cummings' parole was revoked on April 15, 2013. Upon revocation Cummings forfeited 731 days he spent on parole in Twin Falls County Case No. 08-10587.

The IDOC sentencing specialists calculate sentences in strict adherence to Judgment and Commitment orders received from the sentencing judge. Commitment to the Board of Correction is most often set out in years and portions thereof. *See, Fullmer, supra.*

In this case, Cummings does not contest the 731 days forfeited on parole. He only contests the way in which jail credits were applied to his sentence. He argues that

the jail credit should apply to the front end of the fixed sentence, effectively moving his sentencing date back ninety-five days. This is contrary to the law announced in *Doan* and *Fullmer supra*.

Although the district court achieved the correct result, the analysis it used to get there is flawed. The district court attempted to convert the sentences imposed in years to days. (R. 000114-15). This method is different from the method used by the IDOC sentencing specialists and runs the risk of miscalculation of one or more key dates in the sentence calculation.¹ As a general rule, the IDOC sentencing specialists use computer programs that account for leap years and the differing lengths of the months to arrive at key dates such as completion of fixed sentences, full-term release dates, and the effect of jail credits or parole commission forfeitures.

Calculation of consecutive sentences is a nuanced task. The following step by step analysis, engaged in by the IDOC sentencing specialists resulted in the correct calculation of Cummings' sentences.

1. The sentences for Twin Falls County Case Nos. CR 08-10587 and CR 12-10984 are viewed together. The initial sentence date is June 8, 2009 (the date the sentence was imposed in case CR 08-10587). The full-term of the combined sentences is eleven years. After all credits and forfeitures are applied the full-term release date is December 14, 2021. (R. 000097).

¹ The district court misstates Cummings' parole eligibility date as December 14, 2018 on all sentences, where Cummings latest parole eligibility date is actually September 30, 2013. To follow the District court's analysis would have the effect of fixing the indeterminate portion of Case No. CR 08-10587, a position raised by the State in *Doan* and soundly rejected by this Court.


2. A total of 176 days are subtracted from the fixed portion of the combined full term sentences to reflect jail credits reducing the fixed-term of each sentence. (95 days for Case No. CR08-10587 and 81 days for Case No. 12-10984). This results in a working release date of December 13, 2019 before adding the 731 days of parole forfeiture.
3. The next step is to add the 731 days Cummings spent on parole which the parties agree were correctly forfeited. This results in a full-term release date of December 14, 2018 for Case No. CR 08-10587 and a full term release date of December 14, 2021 for sentence Case No. CR 12-10984. (R. 000097).
4. This calculation results in Cummings currently being eligible for parole. He became eligible for parole consideration for Case No. CR 08-10587 on September 4, 2010 and for Case No. CR 12-10984 on September 30, 2013. (R. 000097).

CONCLUSION

This case is simply the result of a misunderstanding on Cummings part about the manner in which jail credits are applied to consecutive sentences. The IDOC sentencing specialists calculated Cummings' sentences correctly in conformance with existing law. The fixed portion of each sentence was retired first. Jail credits were subtracted from the end of each consecutive fixed term. Consecutive indeterminate sentences began to run and are being calculated one after the other. The parties agree that the parole forfeiture was correctly applied.

There is no genuine issue of material fact in dispute as to the calculation of Cummings' sentences and the Respondents are entitled to judgment as a matter of law. For these reasons the district court's Memorandum Decision and Order dismissing Cummings' petition should be affirmed.

Respectfully submitted this 12th day of November, 2014.


MARK A. KUBINSKI
Deputy Attorney General
Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th of November, 20014, I caused to be mailed two true and correct copies of the foregoing to Gerald B. Cummings #40522, S.I.C.I, PO Box 8509, Boise, ID, 83707 via the prison mail system.


MARK A. KUBINSKI