

11-28-2014

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

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"Cummings v. Idaho Com'n of Pardons & Parole Appellant's Reply Brief Dckt. 42367" (2014). *Not Reported*. 1983.
https://digitalcommons.law.uidaho.edu/not_reported/1983

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.

COPY

IN THE Supreme Court of THE STATE OF IDAHO

FILED - COPY
NOV 28 2014
Supreme Court Court of Appeals
Entered on ATS by

GERALD B. CUMMINGS
petitioner/appellant,

VS.

Idaho Commission of Probation
& PAREDE, DAVID ATKINSON,
OLIVIA CRAVELL
Respondents/Appellees

DOCKET NO:
42367-2014

DC Docket NO:
CV HC 2014-07680

Reply to Respondents Brief

HONORABLE DANIEL C. HURLBUTT
District Judge

GERALD CUMMINGS
SICI, MCH-C-24
P.O. Box 8509
BOISE, ID 83707
PETITIONER/APPELLANT, PROSE

MARK K KUBINSKI, JSB # 5275
Deputy Attorney General
Idaho Department of Corrections
1299 N. Orchard St. Ste 110
BOISE, ID 83706
Attorney for Appellee/
Respondent.

TABLE of CONTENTS

TABLE of CONTENTS	ii
TABLE of CASES & AUTHORITIES	iii
Argument	1
Conclusion	6
Certificate of Service.	9

Repy Brief. pg. ii

TABLE OF CASES AND AUTHORITIES

Fullmer v COLLARD, 143 IDAHO 171, 172 139 P3d 773 (Ct. App 2006) 2, 3, 4
DOAN V. STATE, 132 IDAHO 796, 800 979 P2d 1154, 1158 (1999) 4

STATUTES

IDAHO CODE § 18-308

6

IDAHO CODE § 18-309

1, 2, 5, 6, 8

IDAHO CODE § 18-2513

2

Reply Brief pg. iii

Argument

Cummings Challenge to his SENTENCE IS SUPPORTED BY EXISTING LAW PER IC § 18-309

IT IS CLEAR THAT THE STATE CONTINUES TO ~~Cloud~~ cloud this issue before this court concerning IDOC method of calculating a prisoners time.

MR. Cummings IS NOT CHALLENGING THE 731 days that the PAROLE COMMISSION FORFIETED FROM HIM, BECAUSE THAT TOOK PLACE FOUR (4) PLUS MONTHS AFTER THE IDOC MIS CALCULATION. ORIGINALLY OCCURED. THE ACTUAL DATE OF MIS CALCULATION OCCURED ON 11-14-12 WITH MR. ATKINSON DURING THE ON-SITE HEARING IN TWIN FALLS COUNTY JAIL. (R.000019)

MR. Cummings HAS CLEARLY SHOWN FROM HIS FIRST DAY IN JAIL, 9-29-12 TO CURRENT, HE HAS BEEN INCARCERATED AND BY NO MEANS, BEEN LEGALLY RELEASED FROM SUCH IMPRISONMENT & SUBSEQUENTLY RETURNED, THERE TO.

Reply Brief pg. 1

IN the BRIEF for the Respondents they STATE:

" A term of imprisonment for conviction of a felony must consist 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. IDatto Code § 18-2513. (RB, pg 3)

This clearly shows that the state is confused BECAUSE there is NO IC § 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. (IC § 18-309)

The Respondents further write:

" This credit is given by subtracting the number of days credit from the END of the FIXED term of the prisoners sentence, or from the FINAL RELEASE DATE IF NO FIXED

Reply Brief pg 2

Term Applies to the Sentence."
Fullmer v. Collard, 143 Idaho 171, 172
139 P.3d 773, (Ct. App 2006).

APPARENTLY THE STATE/IDOC HAS INTERPRETED THAT CASE SITE INCORRECTLY. MR CUMMINGS CASE 08-10587 IS NOT APPLICABLE TO BE ATTACHED EVEN BY "Fullmer", ONLY CASE 12-10984 WOULD BE APPLICABLE FOR THIS APPLICATION.

IT HAS BEEN A LONG & CLEAR STANDING IN THE COURTS OF LAW ACROSS THIS UNITED STATES, THAT, WHEN A PERSON IS SENTENCED, THAT HIS JAIL TIME ALWAYS COMES FIRST, THEN HIS IMPRISONMENT TIME CONTINUES AS LONG AS THE ACCUSED & CONVICTED PERSON WAS NEVER TEMPORARILY RELEASED, AND THE TIME DURING WHICH HE WAS AT LARGE MUST NOT BE COMPUTED AS PART OF SUCH TERM.

THE STATE FURTHER STATES:

Reply Brief pg. 3

"When Consecutive Sentences have been imposed, a prisoner first serves the fixed term of the 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)

AGAIN MR CUMMINGS HAD ALREADY COMPLETED HIS 08-10587 FIXED TERM ON 10/1/10 AND HAD ALREADY STARTED HIS INDETERMINATE term of that conviction AND HAD BEEN ON THE INDETERMINATE term for 731 days prior to the arrest & conviction of his CASE 12-10984.

IT IS QUITE OBVIOUS THAT THE STATE HAS MISUSED "Fullmer" IN THIS PARTICULAR INSTANCE AND THAT THE ACTUAL READING OF THE CASE GOES ALONG WITH MR. CUMMINGS CLAIMS.

IF THE STATE Sentencing Specialist had

Reply Brief pg 4

CALCULATED SENTENCES IN STRICT ADHERENCE TO JUDGMENT & COMMITMENT ORDERS RECEIVED FROM THE SENTENCING JUDGE, THEY WOULD HAVE RECOGNIZED THAT THE FIXED TERM IN 08-10587 HAD BEEN COMPLETED AND THAT NO TIME COULD BE APPLIED TO IT FOR ANY REASON FOR THAT MATTER, ICS R-309 WOULD NOT ALLOW IT EITHER.

FURTHERMORE, THE STATE (RB. P. 5) SAYS:

"AS A GENERAL RULE, THE IDOC SENTENCING SPECIALIST USE COMPUTER PROGRAMS THAT ACCOUNT FOR LEAP YEARS & 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 SAIL CREDITS OR PAROLE COMMISSIONS FORFEITURES."

APPARENTLY THE IDOC COMPUTER PROGRAM IS FLAWED IN ITS CALCULATING OF CONSECUTIVE SENTENCES WHERE THE FIRST SENTENCE FIXED TERM HAS BEEN COMPLETED 2 YEARS BEFORE

Reply Brief p. 5

The SECOND SENTENCE HAD BEEN APPLIED.

Fullmer, upon further review with the ASSISTANCE of SICI PARALEGAL, DOES ALIGN with MR Cumming's ASSURIONS to ACTUALLY support his claim. (NOTE: R. 000105, 106, 107, 108, Show EXACTLY what CITATIONS MR Cummings HAS at his DISPOSAL to ACURATLY research & support his claim.)

THE FDOC CANNOT ADD the 2 FIXED Terms together & subtract FROM FROM a FIXED term THAT has BEEN Completed IS WRONG. ONCE the FIXED time STARTS AT the JAIL, (off the front) IT CAN ONLY END IN PRISON.

CONCLUSION

FDOC Flawed Computer program when IT IS APPLIED to this CASE, HAS VIOLATED IC § 18-308 & IC § 18-309 AS APPLICABLE to consecutive sentences. MR Cummings IS NOT the ONE with the MISUNDERSTANDING

Reply Brief p 6

AS TO HOW TIME CALCULATIONS WORK, IT IS
A SIMPLE ELEMENTARY ADDITION & SUBTRACTION
LEVEL APPLICATION.

IDOC HAS NO LAWFULL AUTHORITY
OF ANY KIND TO CHANGE ANY PART OF HIS
JUDGMENT & COMMITMENT DATES AS ESTABLISHED
BY IDOC IN 08-10587 PRIOR TO 9-29-12
AND SHOULD NEVER LEGALLY BEEN CHANGED
BY DAVID ATKINSON, IDOC OR ~~APPROVED~~
BY OLIVA CRAVIN, IDAHO PAROLE & PROBATION
EXECUTIVE DIRECTOR.

MR CUMMINGS 08-10587 CASE COULD NOT
BE ALLOWED BY IDOC TO CHANGE HIS FULL-TERM
RELEASE DATE FROM 3-23-16, PER IC § 18-309
OR IC § 18-308. THE 284 DAYS THAT WAS
ADDED TO MR CUMMINGS 08-10587 FULL-TERM
RELEASE DATE IS A VIOLATION OF HIS CIVIL
RIGHTS AND IS DOUBLE JEOPARDY BECAUSE HE
HAS ALREADY SERVED THE 81 DAY JAIL CREDITS
AND THE 284 DAYS THAT COMPLETS HIS FIXED
PORTION OF UNINTERRUPTED IMPRISONMENT ON 12-
10-1984. MR HAS TO THIS DAY BEEN IMPRISONED
SINCE 9-29-12 & HAS YET BEEN AT LARGE


Reply Brief pg. 7

IN ACCORDANCE TO IC § 18-309.

MR Cummings has shown that there IS A GENUINE ISSUE OF MATERIAL FACT IN DISPUTE AS TO THE CALCULATION OF CUMMINGS SENTENCES & THE RESPONDENTS WERE NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

FOR THIS, THE DISTRICT COURT ORDER SHOULD BE REVERSED & REMANDED.

Respectfully Submitted this
25th day of November, 2014



GERALD B. Cummings, Pro-se
Appellant/Petitioner

Reply Brief pg. 8

Certificate of Service

I HEREBY CERTIFY that on the 25th of
November, 2014, I CAUSE to be MAILED
ONE true & correct copies of the foregoing
to: MARIC A. KUBINSKI, ISB #5275
Deputy Attorney General
IDaho Department of Corrections
1299 N. ORCHARD ST. Ste 110
BOISE, ID 83706

VIA the PRISON MAIL system.


Gerald B Cummings #40522
Sief men C-74
P.O. Box 8509
Boise, ID 83707

Reply Brief pg. 9