

8-3-2016

State v. Hanson Respondent's Brief Dckt. 44066

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44066
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2004-1253
)	
ROBERT LYNN HANSON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Hanson failed to show error in the district court's denial of his motion to correct credit for time served?

Hanson Has Failed To Show Error In The District Court's Denial Of His Motion To Correct Credit For Time Served

In 2004, a grand jury indicted Hanson on three counts of sexual abuse of a child under the age of 16 years and two counts of failure to report abuse. (R., pp.6-8.) Pursuant to a plea agreement, Hanson pled guilty to one count of sexual abuse of a child under the age of 16 years, and the state dismissed the remaining charges. (R.,

pp.54-55.) The district court imposed a unified sentence of 15 years, with three years fixed, and retained jurisdiction. (R., pp.70-73.) Following the period of retained jurisdiction, the district court relinquished jurisdiction and granted Hanson 454 days of credit for time served. (R., pp.77-79.) Hanson filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.85-88, 98-100.)

More than nine years later, Hanson filed a “Motion for Correction of Sentence Per ICR 35(c),” claiming that the Idaho Department of Correction (IDOC) “incorrectly calculated” the “full term expiration” date of his sentence when applying his 454 days of credit for time served. (R., pp.102-04.) The district court denied the motion, noting that Hanson was not challenging the court’s calculation of 454 days of credit for prejudgment time served, and that it did not have jurisdiction to correct decisions made by IDOC with respect to whether to award Hanson credit for time served while he was on parole. (R., pp.106-08.) Hanson filed a notice of appeal timely only from the district court’s order denying his motion to correct credit for time served. (R., pp.109-11.)

Hanson asserts that the district court erred by denying his motion to correct credit for time served because, he claims, IDOC incorrectly calculated the full term expiration date of his sentence when it applied his 454 days of credit for time served. (Appellant’s brief, pp.1-2.) Hanson has failed to show error in the district court’s denial of his motion to correct credit for time served.

“A motion to correct a *court’s* computation of credit for time served, granted pursuant to Idaho Code Sections 18-309 or 19-2603, may be made at any time.” I.C.R. 35(c) (emphasis added). Pursuant to I.C. § 18-309:

In computing the term of imprisonment, the person against whom the judgment was entered shall receive credit in the judgment for any

period of incarceration *prior to entry of judgment*, if such incarceration was for the offense or an included offense for which the judgment was entered. The 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 time during which he was at large must not be computed as part of such term.

I.C. § 18-309(1) (emphasis added).

In its order denying Hanson's motion to correct IDOC's calculation of the full term expiration date of Hanson's sentence, the district court properly determined that its jurisdiction under Rule 35(c) "is limited to correcting the Court's own computation of credit for time served" and that "Hanson has not argued, much less shown, that the Court's own computation is incorrect." (R., p.107.) The district court continued:

Moreover, the Court is able to discern from the records attached to the motion [see R., p.104] that the Department has not failed to give effect to the Court's award of 454 days of credit for prejudgment incarceration. The difference between the full term expiration date as calculated by the Department and as calculated by Hanson is almost entirely accounted for by an evident parole commission decision that 116 days of the time Hanson spent on parole should not be counted against his prison sentence. That decision is within the parole commission's authority, see I.C. § 20-228, and the Court lacks authority to override it.

(R., p.107.) Indeed, the Idaho Department of Correction Official Time Calculation Report – submitted by Hanson in support of his motion to correct credit for time served – indicates that, following his commitment to IDOC, Hanson was paroled on at least one occasion, and that his parole was later revoked. (R., p.104.) As stated by the district court, I.C. § 20-228 authorizes *the parole commission* to exercise discretion to credit time spent on parole when calculating the remaining period of confinement after parole is revoked. Specifically, I.C. § 20-228 provides: "Such 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... ." Nothing in the record rebuts the presumption that the Commission, in the exercise of its statutory discretion, determined that Hanson was not entitled to credit for the time he spent on parole prior to being recommitted. A motion to correct credit for time served is not the proper mechanism for addressing IDOC's calculation of the full term expiration date of Hanson's sentence, particularly where, as here, Hanson is not challenging the amount of credit for time served (prejudgment) that the district court awarded him. Rather, a petition for writ of habeas corpus is an appropriate mechanism for challenging an alleged impropriety or error in the Department's computation of a prisoner's sentence. Mickelsen v. Idaho State Correctional Instn., 131 Idaho 352, 355, 955 P.2d 1131, 1134 (Ct. App. 1998).

Because the district court did not have the authority to alter computations made by IDOC, or to grant Hanson credit for time he served on parole after he was committed to IDOC custody, the court did not err by denying Hanson's motion to correct the Department's calculation of the full term expiration date of Hanson's sentence. As such, Hanson has failed to establish error in the district court's denial of his motion to correct credit for time served and the court's order denying the motion should be affirmed.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Hanson's motion to correct credit for time served.

DATED this 3rd day of August, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of August, 2016, I caused a true and correct copy of the foregoing RESPONDENT'S BRIEF to be placed in the United States mail, postage prepaid, addressed to:

ROBERT LYNN HANSON
IDOC #77742
ISCC Q-9-A
P.O. Box 70010
Boise, Idaho 70010

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General