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## State v. Crombie Respondent's Brief Dckt. 44614

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## STATEMENT OF THE CASE

### Nature Of The Case

Troy M. Crombie appeals from the district court's order denying his motion for additional credit for time served.

### Statement Of The Facts And Course Of The Proceedings

The district court summarized the relevant factual and procedural history of this case in its final order denying Crombie's motion for credit for time served as follows:

On September 10, 2012, Defendant entered a plea of guilty to a charge of Malicious Injury to Property, I.C. § 18-7001(2). On October 29, 2012, the Court sentenced Defendant to a unified term of five years of which two years are fixed with a subsequent indeterminate term of three years. The Court suspended the imposed sentence and placed the Defendant on supervised probation for five years.

Subsequently, Defendant admitted four probation violations. The first report of probation violation was filed with the Court on March 11, 2013, and on April 29, 2013, the Court continued Defendant on probation for a period of five years from the date of disposition. The second report of probation violation was filed with the Court on July 19, 2013, and on September 30, 2013, the Court continued Defendant on probation for a period of five years. The third report of probation violation was filed with the Court on November 13, 2013, and on December 24, 2013, the Court revoked Defendant's probation, reinstated the imposed sentence, [and] retained jurisdiction for 365 days. On April 30, 2014, the Court suspended the imposed sentence and placed Defendant on probation for a period of five years with additional terms and conditions. A fourth probation violation was filed with the Court on December 18, 2014, and on July 21, 2015, the Court revoked Defendant's probation and reinstated the imposed sentence.

The Court also ordered on July 21, 2015, that Defendant receive credit for any time he served in connection with this matter as follows: Defendant was originally arrested in this matter on March 13, 2012, and remained in custody until posting bond on May 2, 2012, 51 days;

Defendant served 13 days in the Bannock County Jail for treatment. Defendant was again incarcerated at the Bannock County Jail from January 3, 2013, until February 1, 2013, 30 days. Defendant was arrested for violation of probation on March 7, 2013, and remained in custody until the date of disposition, April 29, 2013, 54 days. Defendant was again arrested for violation of his probation on July 17, 2013, and remained in custody until disposition, October 1, 2013, 77 days. Defendant was arrested for violation of probation on November 7, 2013, and remained in custody until disposition on December 23, 2013, 47 days. The Court revoked probation and Defendant was incarcerated to participate in the retained jurisdiction program, from December 24, 2013, until April 28, 2014, 127 days. After the Court placed Defendant on supervised probation on April 28, 2014, Defendant was arrested for violation of probation on April 20, 2015, and remained in custody until disposition on July 20, 2015, 30 days. In total, the Court has ordered that Defendant receive credit for 429 days served in the Bannock County Jail....

(R., pp.268-70.) On May 24, 2016, Crombie filed a motion requesting additional credit for time served (R., pp.252-56), which the district court denied (R., pp.257-58). Crombie later filed, essentially, a motion for reconsideration (R., pp.259-64), which the district court denied in a more detailed order on September 21, 2016 (R., pp.268-72). Crombie filed a notice of appeal timely from that second order. (R., pp.274-76.)

## ISSUE

Crombie states the issue on appeal as:

Did the district court err when it denied Mr. Combie's motion for credit for time served?

(Appellant's brief, p.3.)

The state rephrases the issue as:

Is Crombie entitled to additional credit for time served?

## ARGUMENT

### Crombie Is Entitled To Additional Credit For Time Served

In its order revoking probation, the district court initially credited Crombie for 302 days served in custody in the Bannock County Jail and for the time served in the retained jurisdiction program, which it later calculated as 127 days. (R., pp.229, 270.) Below, Crombie filed a motion for additional credit for time served. (R., pp.252-56.) Though this motion is difficult to discern, it appears that Crombie first notes that he had only been credited 30 days from his incarceration on his probation violation on April 20, 2015,<sup>1</sup> through his revocation on July 20, 2015, and then argues that he was actually entitled to credit from December 18, 2014, the date of the allegation of his probation violation. (R., p.256.) While the district court correctly rejected Crombie's argument that he was entitled to credit for time served before he was arrested on April 20, 2015, on the bench warrant for the probation violation, it did not correct its miscalculation of time. (R., pp.257-58.)<sup>2</sup>

Idaho Code § 18-309 entitles a defendant to credit for time served "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." Similarly, Idaho Code § 19-2603

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<sup>1</sup> Crombie actually refers to April **28, 2014**, in his motion, but in context this appears to be a scrivener's error. First, Crombie's probation was not revoked on April 28, 2014; he was *placed* on probation on that date. Second, the district court in fact gave him credit for the time served prior to being placed on probation on April 28, 2014—and more than 30 days. (See R., p.270.) Third, the only 30-day calculations in the district court's order are for the periods between January 3, 2013 through February 1, 2013 and April 20, 2015 through July 20, 2015.

<sup>2</sup> Crombie also filed a motion for reconsideration in which he again asserted that his credit for time served was miscalculated. (R., pp.259-64.) The district court also denied this motion in a more detailed order. (R., pp.268-72.)



governs credit for time served in relation to the revocation of probation and provides, in pertinent part, that when probation is subsequently revoked,

the original judgment shall be in full force and effect and may be executed according to law, and the time such person shall have been at large under such suspended sentence shall not be counted as a part of the term of his sentence, but the time of the defendant's sentence shall count from the date of service of such bench warrant.

Thus, under the plain language of the statute, Crombie was only entitled to credit for time served from the date of service of the district court's bench warrant, not the filing of the probation violation allegations. The district court correctly rejected Crombie's argument to the contrary.

On appeal, Crombie does not challenge the merits of the district court's denial of his motion for additional credit for time served. (Appellant's brief, pp.4-5.) However, he notes that the district court originally miscalculated the time served to which Crombie was entitled credit. (Id., p.5.) The state agrees. Review of the record appears to show that, while the dates cited by the district court are correct, the court's calculation of the duration between dates of its final entries is mistaken.

In regards to Crombie's incarceration to participate in the retained jurisdiction program, Crombie notes that the duration between December 24, 2013 and April 28, 2014 is 126 days, not 127 days as calculated by the district court. (Appellant's brief, p.5.) Crombie is correct.<sup>3</sup>

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<sup>3</sup> The record shows that Crombie was actually remanded into custody on December **23**, 2013, not December 24 (see R., pp.187-95), and remained in custody until appearing before the district court again on April 28, 2014, at which time the district court again placed him on probation (R., pp.199-201). The duration between December 23, 2013, and April 28, 2014, counting both end dates, would be 127 days. However, the district court had already included December 23, 2013, in its calculation of credit for time

Respecting his final violation of probation and disposition, Crombie was served with the district court's bench warrant on April 20, 2015. (R., p.206.) The following day, he was brought before a magistrate for arraignment and thereafter held without bond. (R., pp.208-09.) At the disposition on Crombie's probation violation on July 20, 2015, the district court revoked probation and Crombie was taken into custody. (R., pp.227-31.) The district court found that Crombie was in custody from his arrest date until the final disposition, but then miscalculated the duration between April 20 and July 20 as 30 days. (R., p.229.) In fact, including both April 20 and July 20 in the calculation, the duration is 92 days.

Recalculating the district court's totals with the corrected numbers shows that Crombie is entitled to 490 days credit for time served. The state agrees with Crombie that this case should be remanded for the district court to enter the proper order crediting Crombie for 490 days served in custody.

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served (R., p.269), so the period of retained jurisdiction should be counted from December 24, and Crombie's calculation of 126 days is correct.

CONCLUSION

The state respectfully requests that this Court remand this case for the district court to correct its calculation of credit for time served.

DATED this 30th day of June, 2017.

/s/ Russell J. Spencer  
RUSSELL J. SPENCER  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th day of June, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

REED P. ANDERSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Russell J. Spencer  
RUSSELL J. SPENCER  
Deputy Attorney General

RJS/dd