7-27-2017

State v. Barrett Appellant's Brief Dckt. 43947

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 43947**
Plaintiff-Respondent,	)	
	)	**ADA COUNTY NO. CR 2015-8160**
v.	)	
	)	
JASON ROY BARRETT,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
_____	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE SAMUEL A. HOAGLAND
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Jason Roy Barrett appeals from the district court's Judgment of Conviction and Commitment and the district court's Order Denying Motion for Credit for Time Served. Mr. Barrett asserts that the district court erred in denying him credit for 47 days of prejudgment incarceration accumulated while he was being held for both the case at hand and another unrelated case. At the sentencing hearing, the district court partially granted Mr. Barrett's motion for credit for time served, granting him credit for the time served between the service of the Ada County arrest warrant on September 9, 2015, and the sentencing on January 21, 2016, 135 days. Mr. Barrett later made an additional request for credit for time served asserting that he should also be given credit from the time a hold was placed upon him, 47 days prior to the service of the warrant. The Ada County hold was served on Mr. Barrett on July 24, 2015. Therefore, Mr. Barrett was in custody, on this case, for an additional 47 days, from July 24, 2015 until September 9, 2015. Mr. Barrett argues that the plain language of Idaho's credit for time served statute mandates credit for his prejudgment, concurrent incarceration because he had an Ada County hold during his unrelated incarceration. As such, he asserts that he is owed an additional 47 days of credit for time served.

Additionally, Mr. Barrett asserts that the district court abused its discretion when it imposed an excessive sentence without giving proper consideration or weight to the mitigating factors present in this case.

Statement of the Facts and Course of Proceedings

On October 19, 2015, an Information was filed charging Mr. Barrett with possession of a controlled substance with the intent to deliver (methamphetamine), possession of a controlled

substance (marijuana), possession of drug paraphernalia, and resisting or obstructing officers. (R., pp.62-63.) The charges were the result of the events that transpired when officers attempted to arrest Mr. Barrett pursuant to an arrest warrant. (PSI, p.4.)[1] He attempted to flee, a taser was deployed, and Mr. Barrett fell to ground injuring himself. (PSI, p.4.) When he fell to the ground, several illegal items fell from his pockets. (PSI, p.4.)

Mr. Barrett entered into a plea agreement where he agreed to enter a guilty plea to the possession of a controlled substance with the intent to deliver charge and the remaining charges were dismissed. (R., pp.72, 88.) At the sentencing hearing, the prosecution recommended a unified sentence of ten years, with three and one-half years fixed. (Tr., p.29, Ls.5-7.) Defense counsel requested that Mr. Barrett be provided an opportunity for immediate treatment by allowing him to participate in a retained jurisdiction or, if the district court would not retain jurisdiction, imposition of a unified eight year sentence, with two and one-half years fixed. (Tr., p.31, L.21 p.32, L.2.) The district court imposed a unified sentence of ten years, with three and one-half years fixed. (R., pp.87-90.)

During the sentencing hearing, Mr. Barrett requested that he be given credit for time served from the service of the Hold Notice Request or Detainer for Ada County Warrant, served on July 24, 205. (Tr, p.40, L.12-19; Defendant's Ex. 1.) The State objected. (Tr., p.41, L.1 – p.43, L.1.) The district court denied credit from the date of the service of the Hold Notice Request, but awarded credit from the date the warrant was served, September 9, 2015, for a total of 135 days. (Tr., p.43, L.24 – p.44, L.2; R., pp.25-26, 88.)

[1] For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as "PSI" and referenced pages will correspond with the electronic page numbers contained in this file.

Mr. Barrett filed a Notice of Appeal timely from the district court's Judgment of Conviction and Commitment. (R., pp.96-97.) He also filed a timely Rule 35 motion that was denied.[2] (R., pp.86, 103-104.)

Several months later, Mr. Barrett filed a Motion for Credit for Time Served noting that when he "was served with the Hold Notice Request for the instant offense he was incarcerated 'for the offense … for which the judgment was entered.' I.C. § 18-309." (Augmentation: Motion for Credit for Time Served, p.6.)[3] The district court denied the request for additional credit for time served. (Augmentation: Order Denying Motion for Credit for Time Served.)

[2] The denial of the Rule 35 motion will not be addressed on appeal because no new or additional information was provided as is required by *State v. Huffman*, 144 Idaho 201, 203 (2007).

[3] A Motion to Augment was filed contemporaneously with this Appellant's Brief. The motion included a request to augment the Motion for Credit for Time Served and the Order Denying Motion for Credit for Time Served.

ISSUES

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

II. Did the district court abuse its discretion when it imposed, upon Mr. Barrett, a unified sentence of ten years, with three and one-half years fixed, following his plea of guilty to possession of a controlled substance with intent to deliver?

ARGUMENT

I.

The District Court Erred When It Denied Mr. Barrett's Motion For Credit For Time Served

A. Introduction

Mr. Barrett asserts that the district court erred when it denied his request for credit for time served. Mr. Barrett is entitled to credit for pre-judgment incarceration for all of the time he was held in conjunction with the charges in this case. Mr. Barrett asserts that he is owed an additional 47 days of credit for time he was being held for the charges in this case (from the service of the Hold Notice Request on July 24, 2015, to the service of the warrant on September 9, 2015) and that the district court erred in denying his motion for credit for time served. He respectfully requests that this Court order that he be given credit for time served in the amount of 47 days.

B. Standard Of Review

A determination as to "[w]hether the district court properly applied the law governing credit for time served is a question of law over which" appellate courts exercise free review. *State v. Covert*, 143 Idaho 169, 170 (Ct. App. 2006). On appeal, the appellate court will "defer to the district court's findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous." *Id.* The Court exercises "free review over statutory interpretation because it is a question of law." *State v. Owens*, 158 Idaho 1, 3 (2015).

C. The District Court Erred When It Denied Mr. Barrett's Request For Credit For Time Served

The Idaho Criminal Rules specifically provide that a defendant may file a motion to correct the calculation of credit at any time. I.C.R. 35(c). Further, as the Idaho Court of Appeals has recently made clear, "the language of I.C. § 18-309 is mandatory and requires that, in sentencing a criminal defendant or (as in this case) when hearing an I.C.R. 35(c) motion for credit for time served, the court give the appropriate credit . . . ." *State v. Moore*, 156 Idaho 17, 20-21 (Ct. App. 2014). "This means that the defendant is entitled to credit for all time spent incarcerated," as defined by the statute. *Id.*

Idaho Code Section 18-309 governs when credit must be given for both pre- and post-judgment incarceration and provides, in relevant part:

> (1) 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. . . .

I.C. § 18-309(1) (emphasis added). The language of I.C. § 18-309 entitles a defendant to credit for "any period of incarceration" and notably does not base credit on any factor other than actual incarceration.

The plain language of I.C. § 18-309(1) is unambiguous. *State v. Owens*, 158 Idaho 1, 4 (2015). "Statutory interpretation begins with the statute's plain language." *Id.* at 3. The Court "considers the statute as a whole, and gives words their plain, usual, and ordinary meanings." *Id.* "When the statute's language is unambiguous, the legislature's clearly expressed intent must be given effect, and [the Court does] not need to go beyond the statute's plain language to consider other rules of statutory construction." *Id.* This case involves the interpretation of the second phrase of I.C. § 18-309(1): "if such incarceration was for the offense or an included offense for

which the judgment was entered." I.C. § 18-309(1). Examining the plain language of this second phrase, it is clear that I.C. § 18-309 mandates credit for prejudgment time served for an offense regardless of any concurrent incarceration for other offenses or cases.

The language of I.C. § 18-309 can be compared to I.C. § 19-2603, which governs the determination of credit for time served following a probation violation and provides:

> The defendant shall receive credit for time *served from the date of service of a bench warrant* issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the defendant pursuant to section 20-227, Idaho Code, and for any time served as a condition of probation under the withheld judgment or suspended sentence.

I.C. § 19-2603 (emphasis added). "Under the plain terms I.C. § 19-2603, a defendant is entitled to credit for time served from service of a bench warrant for a probation violation." *State v. Bitkoff*, 157 Idaho 410, 413 (Ct. App. 2014). Clearly the Idaho Legislature was aware of how to craft language limiting credit for time served from the date of service of a warrant, but, in drafting this statute, I.C. § 18-309, it chose not to limit the credit in such a manner.

In *State v. Brand*, the Idaho Supreme Court recently decided the issue of whether a defendant is entitled to credit for time served when the defendant is being held on charges from more than one county. *State v. Brand*, No. 44221, 2017 WL 2350303, at *3 (Idaho May 31, 2017). In *Brand*, the Court held that, in determining whether the defendant is entitled to credit, a two-part test is applied, "first, the defendant must have been incarcerated during the intervening period from when the arrest warrant was served and the judgment of conviction was entered; and second, putting aside any alternative reason for the defendant's incarceration, the relevant offense must be one that provides a basis for the defendant's incarceration." *Id.*

That is, the plain language of the statute does not limit entitlement to credit to only apply in those circumstances where a warrant is served, but mandates credit for "*any* period of

incarceration." I.C. § 18-309 (emphasis added). It provides that a defendant is entitled to credit where "such incarceration was for the offense or an included offense for which the judgment was entered," and does not require the service of a warrant before a defendant can be deemed incarcerated for the offense. I.C. § 18-309; *State v. Owens*, 158 Idaho 1, 4 (2015) (holding that "Idaho Code section 18-309's language plainly gives credit for prejudgment time in custody against each count's sentence", and "does not limit that credit in any way").

The analysis in *Brand* comports with the award of credit to a defendant in Mr. Barrett's situation:

> Put another way, section 18-309 entitles Brand and Nall to credit for time served "as long as [their] prejudgment jail time was for 'the offense' [they were] convicted of and sentenced for[.]" *Owens*, 158 Idaho at 4, 343 P.3d at 33. Aside from that requirement, the statute "does not limit that credit in any way." *Id.* Section 18-309 does not limit credit for time served only if, for example, the offense for which the defendant is jailed is that which caused the defendant's initial deprivation of liberty. Rather, section 18-309 applies to all offenses that provide a basis for the defendant's incarceration. It is irrelevant if the defendant's incarceration rests on several, unrelated offenses, as the fact remains that each offense provides a basis for the defendant's incarceration.

Brand, 2017 WL 2350303, at *3.

In the case at hand, a warrant was issued on June 8, 2015. (R., pp.25-24.) On July 20, 2015, an email was sent to IDOC with the subject line "Barrett, Jason Ray Detainer for Ada Warrant please and thanks." (Defendant's Ex. 1.) Attached was a Hold Notice Request stating that Mr. Barrett was wanted by Ada County Sheriff's Office for "CR-FE-2015-0008160 Manufacture/Deliver Control Subst, Possess Scheduled Drug, Possess Drug Paraphernalia, Resisting Officer." (Defendant's Ex. 1.) This Hold Notice Request was served on Mr. Barrett on July 24, 2015. (Defendant's Ex. 1.) However, the warrant was not served until September 9, 2015. (R., pp.25-26.)

At the sentencing hearing, Mr. Barrett requested credit for time served from the service of the Hold Notice Request. (Tr., p.40, Ls.12-19; Defendant's Ex. 1.) Following the State's objection to the request for credit for time served, defense counsel noted that he needed to complete further research and would file a follow-up motion at a later date, if he believed it was necessary. (Tr., p.43, Ls.6-10.) The district court, partially granted the request for credit for time served, awarding credit from the date the warrant was served, September 9, 2015, through the date of sentencing, January 21, 2016, a total of 135 days. (Tr., p.43, L.24 – p.44, L.2; R., pp.25-26, 88.)

Several months later, the issue was again presented to the district court when Mr. Barrett filed a Motion for Credit for Time Served noting that when he "was served with the Hold Notice Request for the instant offense he was incarcerated 'for the offense … for which the judgment was entered.' I.C. § 18-309." (Augmentation: Motion for Credit for Time Served, p.6.) Although it was clear that Mr. Barrett was requesting credit for the time served after being served with the Hold Notice Request on July 24, 2015, the district court found that it was unclear what additional time was being sought and erroneously noted that Mr. Barrett "asserts he was in custody since May 15, 2015. However, it appears Defendant was in custody for a probation violation." (Augmentation: Order Denying Motion for Credit for Time Served, p.2.) Ultimately, the district court denied the request for additional credit for time served. (Augmentation: Order Denying Motion for Credit for Time Served.)

Mr. Barrett acknowledges that he was in custody, for unrelated charges, at the time the Hold Notice Request was served on him. However, he asserts that as soon as the Hold Notice Request was served, he was also incarcerated for the offense at hand. The district court's denial of the request for credit for time served was error. The logical extension of the analysis in *Brand*

provides for awards of credit for time served to a defendant held on other charges in situations like Mr. Barrett's.[4] Once Ada County placed on a hold on Mr. Barrett, he was being held on the Ada County charges. As a result, he was entitled to additional credit from the date of service of the Hold Notice Request (July 24, 2015) to the service of the warrant (September 9, 2015) and, as already provided by the district court, the time from that date until his sentencing. Therefore, the district court erred in denying Mr. Barrett's Motion for Credit for Time Served as he is entitled to 47 additional days of credit for time served.

II.

The District Court Abused Its Discretion When It Imposed, Upon Mr. Barrett, A Unified Sentence Of Ten Years, With Three And One-Half Years Fixed, Following His Plea Of Guilty To Possession Of A Controlled Substance With Intent To Deliver

Mr. Barrett asserts that, given any view of the facts, his unified sentence of ten years, with three and one-half years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, "'[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.'" *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho

[4] Admittedly, the district court did not have the benefit of the Idaho Supreme Court's decision in *Brand* when it denied Mr. Barrett's motion for credit for time served; however, in light of the Court's clarification on the entry of credit for time served when a defendant is incarcerated on charges from multiple counties, Mr. Barrett asks the Court to reverse the district court's decision denying him credit.

573, 577 (1979)). Mr. Barrett does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Barrett must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id*. (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id*. (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo,* 136 Idaho 138 (2001)).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991)).

Mr. Barrett asserts that the district court failed to give proper weight and consideration to the mitigating factors that exist in his case and, as a result, did not reach its decision by an exercise of reason. Specifically, he asserts that the district court failed to give proper consideration to his admitted substance abuse problem and desire for treatment. Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982).

Mr. Barrett began using heroin, methamphetamine, and marijuana in his teenage years. (PSI, pp.23-24.) In late 2014, Mr. Barrett said he became completely overwhelmed, relapsed, and was "using everything to quiet the war in my head." (PSI, p.24.) At the time of his arrest, he was using methamphetamine, heroin, marijuana, and bath salts on a daily basis. (PSI, p.24.) At this time, his drugs of choice were heroin and bath salts. (PSI, p.24.) Mr. Barrett was diagnosed as suffering from Amphetamine Dependence with Physiological Symptoms - In a Controlled Environment, Opioid Dependence with Physiological Symptoms - In a Controlled Environment, and Other (Bath Salts) Substance Dependence with Physiological Symptoms – In a Controlled Environment. (PSI, pp.27, 62.) It was recommended that he participate in Level 2.1 Intensive Outpatient Treatment. (PSI, pp.28, 71.) He has expressed a desire to participate in further treatment and even applied to a treatment provider. (PSI, pp.24, 26, 36.)

Idaho courts have previously recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Mr. Barrett has been previously diagnosed with depression. (PSI, p.22.) At the time the PSI was completed, he was taking Celexa and Clonidine to help with his depression symptoms. (PSI, p.22.) During a recent evaluation, he was diagnosed as suffering from Rule Out - Mood Disorder NOS, Rule Out - Generalized Anxiety Disorder, Rule Out - Posttraumatic Stress Disorder or Acute Stress Disorder or other disorder of extreme stress. (PSI, p.62.) It was recommended that he participate in counseling and continue with his medication. (PSI, p.23.)

Furthermore, in *State v. Shideler*, 103 Idaho 593, 594 (1982), the Idaho Supreme Court noted that family and friend support were factors that should be considered in the Court's decision as to what is an appropriate sentence. *Id.* Mr. Barrett has the support of his family. He has a close relationship with his mother and she is supportive of him finding sobriety. (PSI,

p.18.) He also supplied a letter of support from Jamie Warren. (PSI, p.33.) Ms. Warren wrote that Mr. Barrett is now part of a new family that need and support him. (PSI, p.33.)

Additionally, Mr. Barrett has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, "In light of Alberts' expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character." *Id*. 121 Idaho at 209. At the sentencing hearing, Mr. Barrett noted that:

> I'd just like [to] apologize to the court and everybody involved in my arrest. I was brought up a better man than what my record reflects.
>
> There was a period of time when I had about six years clean and sober. I owned a home and had a mortgage and things were going pretty good, and then the loss of my wife was – you know, I've taken a lot of programs. I wasn't prepared for that loss and ever since then, I had to deal with my drug and alcohol, my addiction. And that's not an excuse; it just the reasons why things happen the way they do.
>
> But I understand I need to be accountable for my actions, and that's all I have. Thank you.

(Tr., p.33, Ls.7-20.)

Based upon the above mitigating factors, Mr. Barrett asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his substance abuse, desire for continued treatment, mental health issues, family support, and remorse, it would have crafted a sentence that focused on his rehabilitation rather than incarceration.

CONCLUSION

Mr. Barrett respectfully requests that this Court order that he be given additional credit for time served in the amount of 47 days. Additionally, he requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 27th day of July, 2017.

_____/s/_____
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of July, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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INMATE #32681
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E-MAILED BRIEF

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_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas