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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45135
 Plaintiff-Respondent,)
) Canyon County Case No.
 v.) CR-2011-20535
)
 EVIN CHRISTOPHER DEVAN,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

HONORABLE DAVIS F. VANDERVELDE
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Evin Christopher Devan appeals from the denial of his motion for credit for time served.

Statement Of The Facts And Course Of The Proceedings

Devan was convicted by a jury of conspiracy to commit burglary, burglary, and misdemeanor trespassing. (R., p.161.) The district court sentenced Devan to concurrent unified sentences of five years with two years fixed on each felony count, and 180 days (concurrent) for trespassing. (R., p.183.) The court suspended Devan's felony sentences, placed him on probation for five years, and imposed the jail sentence for trespass. (R., p.161.) At the time of sentencing, Devan was given credit for 165 days served. (R., p.183.) The Idaho Court of Appeals affirmed Devan's judgment of conviction. (R., pp.160-166.)

The district court explained, "On April 1, 2013, Defendant was arrested on an agent's warrant relating to an allegation that he violated the terms and conditions of probation, and remained in custody until the May 20, 2013 disposition. Sentence was then imposed. At that time, Defendant was given credit for 215 days served." (R., p.183.) The district court further explained Devan's several motions for credit for time served:

The first motion sought credit for time served in Canyon County case CR-12-7864 from March 26, 2012, to June 21, 2012, and again from September 20, 2012 to December 23, 2012. The Court granted the request for credit for time served; however, the request was granted not for the time requested in the motion, but for other days served in the instant case for which the defendant had not previously received credit. Shortly thereafter, the Defendant filed a second motion for credit for time served, again asserting he should receive credit in this case for time served on another matter, which appears to be CR-12-7864. The Court denied this request for the reason that although the Defendant may have served time on an unrelated misdemeanor case while he was on probation in this case, he was not being held on the

present case at any point during that time and therefore was not entitled to credit for the time served in the present case.

The Defendant has now filed a third motion for credit for time served on identical grounds. He asserts that because the sentence in CR-12-7864 was run concurrently to the sentence in the present case, that he is entitled to receive credit in this case for all time served in the 2012 case.

(R., pp.199-200.)

The district court denied Devan's third Motion for Credit for Time Served, ruling that his incarceration for the time periods claimed in 2012 were solely for his 2012 case, not his current case. (R., pp.199-202.) Devan filed a notice of appeal timely from the denial of his third motion for credit for time served. (R., pp. 203-207.)

ISSUE

Devan states the issue on appeal as:

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

(Appellant's Brief, p.3.)

The state rephrases the issue as:

Has Devan failed to show error because, as he admits, the law is contrary to his position? Additionally, is Devan's "credit for time served" issue moot because he has fully completed his sentences?

ARGUMENT

Devan Has Failed To Show Error Because The Law Is Contrary To His Position

A. Introduction

As Devan explains on appeal, he “filed a motion for credit for time served in which he argued that he was entitled to credit for time served in this case because he served 180 days in relation to an unrelated case – CR-12-7864 – and the sentence in that case was ordered to run concurrently to his sentences in this case.” (Appellant’s Brief, p.1; see R., p.189.) The district court concluded that the time Devan spent incarcerated in the 2012 case was only for that case, because he was not also incarcerated during the same time intervals in the current case. (R., pp.199-201.)

On appeal Devan states he is “[m]indful that the plain language of I.C. § 18-309 makes it clear that a defendant will not receive credit for time served on probation, but [he] contends that the district court erred by not awarding him 180 days of credit for time served in this case.” (Appellant’s Brief, pp.4-5.) Devan’s argument fails because it is contrary to applicable law, and his attempt to obtain credit for additional time served is moot.

B. Standard Of Review

“The question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts.” State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005) (citing State v. Hale, 116 Idaho 763, 779 P.2d 438 (Ct. App. 1989)).

C. Devan's Incarceration Was Not For The Offense For Which Judgment Was Entered In This Case

Devan argues on appeal, as he did below, that he is entitled to 180 days additional credit for time served based on two jail stints he served in 2012. (Appellant's Brief, pp.4-5; see R., p.189.) Devan is incorrect.

A defendant is entitled to credit for pre-judgment incarceration "if such incarceration was for the offense or an included offense for which the judgment was entered." I.C. § 18-309. This language "means that the right to credit is conferred only if the prejudgment incarceration is a *consequence* of or *attributable* to the charge or conduct for which the sentence is imposed." Vasquez, 142 Idaho at 68, 122 P.3d at 1168 (emphasis original). "Thus, there must be a causal effect between the offense and the incarceration in order for the incarceration to be 'for' the offense, as the term is used in I.C. § 18-309." Id. A defendant incarcerated "for an unrelated charge" is not entitled to credit for time served. Id.; see also State v. Horn, 124 Idaho 849, 850, 865 P.2d 176, 177 (Ct. App. 1994).

The district court found, and those findings are not challenged on appeal, that "[w]hen the Defendant was incarcerated from March 26, 2012, to June 21, 2012 and from September 20, 2012 to December 23, 2012, he was being held solely on the 2012 case." (R., p.200.) Devan's claim that he is entitled to credit for those periods of time served in his 2012 case because his sentence in that case ran concurrently with his sentence in the present case does not make the incarceration "for the offense" in the judgment in this case.

As the court explained:

When a sentence is run concurrently to another it only means that when a defendant is incarcerated on both cases, the time for each runs simultaneously. If the defendant is being held on only one of those cases, the time only runs as to that one case. Case law is clear that to receive credit for time served on a particular sentence, the defendant must be incarcerated

for the offense for which he seeks credit. *State v. Brand*, No. 43441, 2016 WL 886541, at *3 (Idaho Ct. App. Mar. 9, 2016).

(R., p.200.) The court correctly held that Devan was “only entitled to receive credit for that time as against the sentence in that case. Under no construction of the law is he entitled to receive credit for that time in this case.” (R., p.200 (underscore original).) Devan has failed to show any error in the court’s denial of his Motion for Credit for Time Served.

D. Devan’s “Credit For Time Served” Argument Is Moot

“An issue is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome.” *Smith v. Smith*, 160 Idaho 778, 784, 379 P.3d 1048, 1054 (2016) (internal quotes and citation omitted). “[T]his Court will not hear and resolve an issue that presents no justiciable controversy and a judicial determination will have no practical effect on the outcome.” *Mitchell v. State*, 160 Idaho 81, 89, 369 P.3d 299, 307 (2016). Where a party receives redress of an alleged error through a Rule 35 motion, the claim of error is rendered moot. *State v. Gallipeau*, 128 Idaho 1, 5, 909 P.2d 619, 623 (Ct. App. 1994).

Devan’s argument that he was entitled to credit for time served has been rendered moot by his acknowledgment that, as of September 5, 2017, he had served the full term of his sentence. (See Appellant’s Brief, p.2; Idaho Board of Correction website: https://www.idoc.idaho.gov/content/prisons/offender_search.) Because this appeal could have no “practical effect on the outcome” of how much prison time Devan has to serve, this issue is moot and should be dismissed.

CONCLUSION

The state respectfully requests this Court to affirm the order denying the motion for credit for time served.

DATED this 26th day of February, 2018.

/s/ John C. McKinney _____
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of February, 2018, 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.

/s/ John C. McKinney _____
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd