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### State v. Devan Appellant's Brief Dckt. 45135

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 45135
Plaintiff-Respondent,	)	
	)	CANYON COUNTY NO. CR 2011-20535
v.	)	
	)	
EVIN CHRISTOPHER DEVAN,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

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**BRIEF OF APPELLANT**

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**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 district court's order denying his motion for credit for time served. Mindful that he is not entitled to credit for time served on probation, he contends that the district court erred when it denied his motion.

### Statement of the Facts and Course of Proceedings

After a jury trial, Mr. Devan was found guilty of conspiracy to commit burglary, burglary and a related misdemeanor charge. (R., p.183.) The district court imposed two concurrent sentences of five years, with two years fixed, for each felony count but suspended the sentence and placed Mr. Devan on probation for five years. (R., p.183.) Subsequently, the district court revoked probation and executed the underlying sentences. (R., p.183.) Mr. Devan then 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. (R., pp.188-89, 199-200.)

The district court denied the motion. (R., pp.199-200.) It wrote, "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." (R., p.200 (emphasis in original).) It further stated that in order to receive credit for time served on a specific sentence, "the defendant must be incarcerated for the offense for which he seeks credit." (R., p.200.) It also noted that, on the dates in question, Mr. Devan was incarcerated only in relation to the unrelated 2012 case and was still on probation in this case. (R., p.200.) For that reason, the district court held he could not receive

credit in this case. (R., p.200.) It stated, “The fact that he has multiple cases for which sentences were ordered to run concurrently is entirely irrelevant. Had a probation violation been filed and an arrest warrant based thereupon served in the present case when he first began serving his time in the 2012 case, he would receive credit in this case because he would have been incarcerated on this case as well as the 2012 case.” (R., p.200.) Mr. Devan timely appealed. (R., pp.203-06.)

Mr. Devan finished serving his sentence in this case on September 5, 2017. (Idaho Offender Search, *available at* [https://www.idoc.idaho.gov/content/prisons/offender\\_search](https://www.idoc.idaho.gov/content/prisons/offender_search).)

ISSUE

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

## ARGUMENT

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

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

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.

The Idaho Court of Appeals has stated, “the language of I.C. § 18-309 is mandatory and requires that, in sentencing a criminal defendant or 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.*

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) (citation omitted). 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.*

As the district court noted, Mr. Devan’s probation in this case was not revoked, nor had an arrest warrant been served based on an alleged probation violation, while Mr. Devan was serving 180 days in the unrelated 2012 case. (R., p.200.) Mindful that the plain language of I.C. § 18-309 makes it clear that a defendant will not receive credit for time served on probation,



Mr. Devan contends that the district court erred by not awarding him 180 days of credit for time served in this case.

CONCLUSION

Mr. Devan respectfully requests that this Court reverse the district court's order denying his motion for credit for time served and remand this case for further proceedings.

DATED this 5<sup>th</sup> day of December, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
REED P. ANDERSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5<sup>th</sup> day of December, 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:

DAVIS F VANDERVELDE  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

RPA/eas