7-31-2014

State v. Stevenson Appellant's Reply Brief Dckt. 41173

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 41173
	)	
v.	)	ADA COUNTY NO. CR 2008-19663
	)	
ROBERT LOUIS STEVENSON,	)	REPLY BRIEF
	)	
Defendant-Appellant.	)	
	)	

REPLY 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

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STATEMENT OF THE CASE

Nature of the Case

Robert Stevenson appeals, contending that the district court erred in denying him credit for time served while on probation. In his opening brief, he acknowledged that Idaho Supreme Court and Idaho Court of Appeals precedent holds that credit is not properly awarded for time spent on probation, but asserted those decisions should be overruled because they do not give effect to the plain language of the statute governing awards of credit for time served. The State responds, asserting that Mr. Stevenson did not recognize controlling precedent or argue the proper standard to justify overruling that precedent. It also disagreed with Mr. Stevenson's interpretation of the relevant statutes. As such, Mr. Stevenson deems a reply necessary to address those points.

Mr. Stevenson also raised two other issues regarding the failure to provide him with requested transcripts and the denial of his motion for a reduction in his sentence. Since the State's responses on those issues are not remarkable, little reply is necessary.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Stevenson's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

1. Whether the district court erred in denying Mr. Stevenson's motion for credit for time served while on probation.

2. Whether the Idaho Supreme Court deprived Mr. Stevenson of his constitutional rights to due process and equal protection by denying his request to augment the record with transcripts of hearings relevant to the issue of whether the district court should have reduced his sentence pursuant to I.C.R. 35(b).

3. Whether the district court abused its discretion when it denied Mr. Stevenson's motion for a reduction in sentence.

ARGUMENT

I.

The District Court Erred In Denying Mr. Stevenson's Motion For Credit For Time Served While On Probation

A. The Prior Decisions On The Question Of Whether Credit Should Be Awarded For Time Served On Probation Should Be Rejected Or Overruled Based On The Plain Language Of The Credit Statute

In his Appellant's Brief, Mr. Stevenson asserted that the plain language of I.C. § 18-309, the statute governing credit for time served, allows for credit to be awarded for time served on probation. In making that argument, he acknowledged there were decisions holding to the contrary, but he asserts that those decisions should be rejected, as they fail to give effect to the plain language of the statute. (App. Br., p.1.) The State responds, contending that credit is properly denied for time spent on probation.

The State also asserts that Mr. Stevenson has ignored existing precedent in making his argument on the credit issue. (Resp. Br., pp.4-5 ("Ignoring these controlling precedents . . . . Stevenson has failed to acknowledge the foregoing precedents, much less show that they should be overturned.").) That assertion is untrue. Mr. Stevenson did acknowledge those decisions at the outset of his Appellant's Brief, but contended that "those decisions fail to give effect to the language of the statute, as written, and therefore, should be rejected." (App. Br., p.1.) He specifically cited to *State v. Banks*, 121 Idaho 608, 610 (1992), *State v. Buys*, 129 Idaho 122, 126 (Ct. App. 1996), and *Taylor v. State*, 145 Idaho 866, 869-70 (Ct. App. 2008), in that regard. (App. Br., p.1 n.1.) Additionally, by using the introductory signal "e.g.," he recognized that "other

authorities also state the proposition, but citation to them would not be helpful or is not necessary." THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, p.46 (Columbia Law Review Ass'n et al. eds., 18th ed. 2005). As such, Mr. Stevenson did acknowledge the existing precedent on this issue.

Mr. Stevenson also thought it was clear that, by arguing those precedents did not give effect to the plain language of the unambiguous statute, he was arguing that those precedents were manifestly wrong and should be overruled to vindicate plain, obvious principles of law. After all, the Idaho Supreme Court has made it clear that the courts' job is to give effect to the statute as written, and the power to correct a socially unsound, but unambiguous statutes lies with the Legislature. *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 895-96 (2011). As a result, decisions that do not give effect to the plain meaning of the unambiguous statutes are manifestly wrong.

When a decision has been shown to be manifestly wrong or overruling it is necessary to vindicate plain, obvious principles of law, or if it has otherwise been shown to be unjust or unwise, that decision should be overruled. *State v. Humphreys*, 134 Idaho 657, 660 (2000). However, given the State's apparent confusion in this regard (*see* Resp. Br., pp.4-5), Mr. Stevenson would make it imminently clear that he is contending that prior decisions holding that credit may not be awarded for the time a person is on probation are manifestly wrong because they fail to give effect to the plain language of the relevant statutes, and therefore, should be overruled or otherwise disregarded.

B. The Plain Language Of The Statute Governing Credit For Time Served Reveals That Credit Is Properly Awarded For Periods Of Time The Defendant Spends On Probation

Mr. Stevenson contends that I.C. § 18-309 is unambiguous, and so, this Court should give effect to the plain language of that statute. However, the State contends that "[t]he objective of statutory interpretation is to give effect to legislative intent." (Resp. Br., pp.5-6 (citing *State v. Pina*, 149 Idaho 140, 144 (2010), and *Robinson v. Bateman-Hall, Inc.*, 139 Idaho 207, 210 (2003).) That is not a wholly accurate assertion, as the Idaho Supreme Court has made it extremely clear that:

> "'The asserted purpose for enacting the legislation cannot modify its plain meaning.' . . . The interpretation of the statute 'must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.

Verska, 151 Idaho at 892-93 (quoting *Viking Constr., Inc. v. Hayden Lake Irrigation Dist.*, 149 Idaho 187, 191–92 (2010), and *State v. Schwartz*, 139 Idaho 360, 362 (2003)). Furthermore, when it comes to criminal statutes, if the statute is ambiguous, and the ambiguity "exists as to the elements of or potential sanctions for a crime, this Court will strictly construe the statute in favor of the defendant." *State v. Doe*, 140 Idaho 271, 274 (2004); *see also State v. Trusdall*, 155 Idaho 965, 969 (Ct. App. 2014) ("[I]f a criminal statute is ambiguous, the rule of lenity applies and the statute must be construed in favor of the accused.") Therefore, only if the statute is ambiguous and the rule of lenity does not apply, do the courts turn to the legislative history of the statute, and seek to give effect to the legislative intent of the statute at issue. *Verska*, 151 Idaho at 506.

Mr. Stevenson's argument is that I.C. § 18-309 is not ambiguous, and so, this Court should give effect to the plain language of that statute. Alternatively, the rule of lenity would apply if this statute is ambiguous. Therefore, because the credit statute is unambiguous, or because the rule of lenity applies, this Court should not have to discern the legislative purpose of the statute in this case.

1. The Language Of I.C. § 18-309 Is Unambiguous And Does Not Prevent Credit For Time Spent On Probation

The plain, unambiguous language of the credit statute, I.C. § 18-309, states that only the time for which a defendant is not entitled to credit against his sentence is the time he is "by any legal means is temporarily released from such imprisonment and subsequently returned thereto." I.C. § 18-309. Giving this language its plain, usual, and ordinary meaning, it is clear that the statute does not prevent credit for time served during probation, since probation is not a "temporary" release from incarceration, nor is a person "at large" while he is on probation.

As an initial matter, the State appears to contend that, if the statute does not expressly authorize credit for a particular period of time, then it inherently denies credit for that period of time. (*See* Resp. Br., p.7 ("Because a probationer is necessarily not incarcerated, a defendant is not entitled to credit for time spent on probation.").) Based on this perspective, the State argues that the only time for which credit is authorized is the time a person was incarcerated, and since probation is not synonymous with incarceration, a probationer is not entitled to credit for time on probation. (Resp. Br., p.7.) While Mr. Stevenson agrees that probation is not synonymous to incarceration, the State's conclusion is wrong because the part of the statute on which it

relies speaks only in terms of *pre-judgment* incarceration. I.C. § 18-309 ("shall receive credit in the judgment for any period of incarceration *prior to the entry of judgment*, if such incarceration was for the offense or an included offense for which the judgment was entered") (emphasis added). However, probation is not an issue until after the judgment is entered, and so that portion of the statute is not relevant to the question of whether credit is properly awarded for time served on probation.

In the post-judgment context, the statue provides: "The remainder of the term commences upon the pronouncement of sentence and if thereafter . . . ." I.C. § 18-309. That means the time accrued against the sentence (*i.e.*, will be credited against the sentence) will start counting from the date the sentence was imposed, and will continue counting unless and until some other situation stops it from doing so. As a result, the State's approach to this question – that if credit for probation is not specifically authorized by the statute, it is not appropriately awarded – is directly contrary to the plain language of the statute as a whole.

There is only one situation identified in the statute that stops the clock from running after the defendant's sentence has been pronounced – "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. The plain language of that portion of the statute means there are two prerequisite conditions that need to exist for the district court to properly deny post-judgment credit: (1) the person needs to be temporarily released from incarceration, and (2) he needs to be at large during that temporary release. Since a probationer adhering to the terms of his probation is neither

temporarily released, nor at large, time against his sentence does not stop accruing during the period of probation, and so, credit is appropriately awarded for that period of time where a person is on probation and adhering to the terms and conditions of probation.

On the first of the prerequisite conditions necessary to deny credit, the State contends that Mr. Stevenson's release was temporary, in that his probation was ultimately revoked and his sentence executed, and so, contends that he is not entitled to credit for that time. (Resp. Br., p.6.) The State's argument promotes an overly-broad interpretation of the term "temporarily," which is based on the idea that all periods of life are necessarily finite, and therefore, temporary. As a result, it basically contends that a period of release may retrospectively be made temporary. However, that perspective is inappropriate in determining the legal ramifications of a statute.

From the legal standpoint, the determination of whether the release was temporary should be made based on the time the relevant act – the release from incarceration – happened. *Cf. Guzman v. Piercy*, 155 Idaho 928, 937 (2014) (holding that, in general, statutes are meant to act prospectively; retrospective or retroactive statutes are disfavored); *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 315 (2010) (holding that, when a term in a contract is unclear, the courts consider "the meaning intended by the parties at the time of contracting, not at some future time."). Thus, the appropriate question is, at the moment of release, was the release temporary? The answer in regard to a release on probation is "no," because, unlike a

release on furlough, there is no associated requirement that the defendant ever return to prison.[1] Therefore, the *release* was not temporary.

This conclusion is particularly appropriate since the probationer has a protected liberty interest in not being sent back to prison. *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972); *State v. Rose*, 144 Idaho 762, 766 (2007). The fact that those constitutional safeguards exist affirmatively demonstrates that the release on probation is not temporary, regardless of what happens afterward. This is an important distinction which means, basically, that the probationer becomes entitled to credit before any decision to revoke that probation is entered. As a result, this Court should reject the State's unsupported definition of the term "temporarily."

As to the second prerequisite condition necessary to deny credit, the State only contends that the term "at large" means "'not imprisoned.'" (Resp. Br., p.6.) The State cites no authority demonstrating that is a definition of the term, either in proper English or in common usage. Nor does the State address the fact that Mr. Stevenson's definition of the term "at large" (free; unrestrained; not under control (App. Br., pp.10-11)) is consistent with the legal dictionary definition of the term, as well as its common usage in case law. (App. Br., p.12.) Therefore, the state's definition of "at large" should be disregarded.

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[1] When an incarcerated inmate is released on furlough, he is allowed to leave the prison facility for a specific period of time, but then is expected to return to that facility at the end of the furlough period. Thus, from the outset, a furloughed inmate is temporarily released from imprisonment and subsequently returned thereto, and would, therefore, be appropriately denied credit if he were at large during that time. The probationer, on the other hand, is not "temporarily" released from incarceration because he is not expected to return to the prison as a condition of his release.

Furthermore, the State's definition of the term "at large" is inappropriate because, if adopted, it would cause I.C. § 18-309 to be inconsistent with other statutes, such as I.C. §§ 20-242 and 20-228. (App. Br., pp.13-14.) For example, an inmate who is granted furlough pursuant to I.C. § 20-242 is not in prison during his release, but he still able to serve his sentence (*i.e.*, get credit against his sentence) for the time he is out on furlough. *See* I.C. § 20-242(1)-(2). However, applying the State's definition of at large (not imprisoned), I.C. § 18-309 would require that the furloughed inmate not get credit, since he would not be imprisoned during a period of his furlough. Similarly, I.C. § 20-228 allows parolees to receive credit for time they are on parole, but the State's definition of "at large" would bar them from receiving such credit, since parolees are not imprisoned. Thus, the State's definition of "at large" would make Idaho's statutes inconsistent with each other. Since this Court strives to read statutes so that they will not be inconsistent with each other, *see, e.g., Dept. of Health & Welfare v. Housel*, 140 Idaho 96, 104 (2004), and the State offers no explanation as to how its definition of the term "at large" would bring harmony to these statutes, its definition of the term "at large" should be rejected.

Under the plain definition of "at large," it is clear why probationers adhering to the terms thereof probation are not properly considered to be at large. Probationers are definitely not free from restraint, as they remain subject to the control of their probation officers, pursuant to the terms of their probation. They would only be free from that restraint or not under control (and thus, would be at large) when they abscond supervision. (App. Br., pp.10-17.) Therefore, a probationer adhering to the terms of his probation is not "at large" and so, there is no period of time while he is adhering to the

terms of his probation that will stop the clock from running against his sentence. As there was no allegation that Mr. Stevenson had absconded supervision, he was not at large. (*See generally* R., pp.106-08.)

Therefore, since neither of the two prerequisite conditions that are necessary to deny credit in the post-judgment context is present in this case, this Court should reverse the district court's order denying Mr. Stevenson's motion for credit for time served.

2. If The Credit Statute Is Ambiguous, The Rule Of Lenity Should Apply

In his Appellant's Brief, Mr. Stevenson argued that, if this Court determines that the State's interpretation of the credit statute is also reasonable, the rule of lenity should apply and the statute read in his favor. (App. Br., p.18.) The State argues that the rule of lenity does not apply in this case because it does not believe Mr. Stevenson's interpretation of the statute is reasonable. (Resp. Br., p.7.) However, as demonstrated in the Appellant's Brief and in this brief, there is substantial precedential and textual support for Mr. Stevenson's interpretation of the credit statute. Therefore, despite what the State believes, his interpretation is a reasonable interpretation. Thus, if this Court believes that the State has also put forth a reasonable interpretation (which Mr. Stevenson does not concede), there would be two reasonable interpretations of the statute. In that case, because that would render this criminal statute ambiguous, the rule of lenity would apply in this case. The result is that Mr. Stevenson should be credited for the time he spent on probation adhering to the terms thereof.

II.

The Idaho Supreme Court Deprived Mr. Stevenson Of His Constitutional Rights To Due Process And Equal Protection By Denying His Request To Augment The Record With Transcripts Of Hearings Relevant To The Issue Of Whether The District Court Should Have Reduced His Sentence Pursuant To I.C.R. 35(b)

Mr. Stevenson acknowledges that the Idaho Supreme Court recently issued its opinion in *State v. Easley*, 156 Idaho 214, 218-20 (2014), which addressed several of the issues raised in his Appellant's Brief. However, as the State's response in this regard is not remarkable, no further reply in this regard is necessary. He simply refers this Court back to pages 18-24 of his Appellant's Brief.

III.

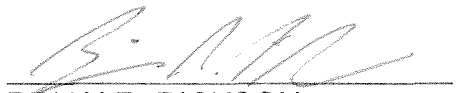
The District Court Abused Its Discretion When It Denied Mr. Stevenson's Motion For A Reduction In Sentence

Because the State's argument concerning the denial of Mr. Stevenson's motion for a reduction of sentence is not remarkable, no further reply is necessary. Accordingly, Mr. Stevenson simply refers the Court back to pages 24-28 of his Appellant's Brief.

CONCLUSION

Mr. Stevenson respectfully requests that this Court reverse the order denying his motion for credit for time served and that it remand this case for a proper calculation of credit. He also respectfully requests access to the requested transcripts and the opportunity to provide any necessary supplemental briefing raising issues which arise as a result of that review. In the event this request is denied, Mr. Stevenson respectfully requests that this Court reverse the decision to deny his motion for leniency and reduce his sentence as it deems appropriate, or alternatively, remand the case for a reduction of sentence pursuant to I.C.R. 35.

DATED this 31st day of July, 2014.



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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of July, 2014, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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