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State v. Denny Appellant's Reply Brief Dckt. 41660

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) NO. 41660
)
 v.) KOOTENAI COUNTY
) NO. CR 2008-12522
 JEFFREY ALAN DENNY,)
)
 Defendant-Appellant.) REPLY BRIEF
)
 _____)

REPLY BRIEF OF APPELLANT

COPY

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI

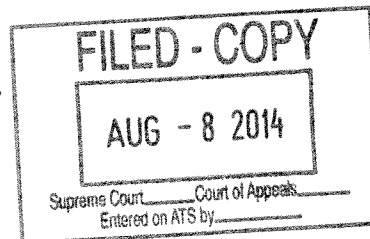
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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, forty-three-year-old Jeffrey Alan Denny pleaded guilty to felony possession of a controlled substance (methamphetamine). The district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. After Mr. Denny completed a “rider,” the district court placed him on supervised probation for a period of three years. Later, Mr. Denny admitted to violating his probation. The district court revoked probation and retained jurisdiction a second time. After Mr. Denny completed another rider, the district court relinquished jurisdiction and executed the underlying sentence.

Mr. Denny filed a motion for credit for time served, and the district court issued an order giving him credit for 279 days previously served. Mr. Denny then filed a second motion for credit for time served, requesting credit for time he served in the Spokane County Jail in Washington State. The district court wrote Mr. Denny a letter explaining that he could not get credit for that time, because that time was based on a conviction in another state. Mr. Denny filed a third motion for credit for time served, asserting that the time he served in the Spokane County Jail was largely based on the Kootenai County warrant for his probation violation. The district court denied the third motion for credit for time served.

Mr. Denny appealed, asserting that the district court erred when it denied his third motion for credit for time served. (App. Br., pp.8-9.) In its Respondent’s Brief, the State argued that Mr. Denny did not show error in the denial of his third motion for credit for time served. (Resp. Br., pp.6-10.)

This Reply Brief is necessary to clarify the applicable law. While the State argued that the applicable law is I.C. § 18-309 (Resp. Br., pp.6-8), the applicable law is actually I.C. § 19-2603. Mr. Denny also challenges the State's broader contention that he did not show error in the denial of his third motion for credit for time served, but he relies upon the arguments contained in his Appellant's Brief and will not repeat them herein.

Statement of the Facts and Course of Proceedings

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

ISSUE

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

ARGUMENT

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

Mr. Denny asserts that the district court erred when it denied his third motion for credit for time served, because he is entitled to credit for the time he served in the Spokane County Jail in Washington State between approximately November 2, 2011, and December 7, 2012, or about 13 months. (See App. Br., pp.8-9.)

In the Respondent's Brief, the State argued that "[t]he award of credit for time served is governed by I.C. § 18-309," and that, "[a]pplying the plain language of I.C. § 18-309 to the facts of this case, the district court correctly concluded [Mr.] Denny is not entitled to credit towards his Idaho sentence for any time he spent in custody in the Spokane County Jail between [October 3, 2011 and December 7, 2012]." (Resp. Br., pp.6, 8.) However, the applicable law is actually I.C. § 19-2603.

As the cases cited by the State indicate (see Resp. Br., p.7), I.C. § 18-309 governs the award of credit for time served for pre-judgment incarceration. See, e.g., *State v. Horn*, 124 Idaho 849, 950 (Ct. App. 1993); *State v. Hale*, 116 Idaho 763, 765 (Ct. App. 1989). In contrast, I.C. § 19-2603 governs the award of credit for time served post-judgment in cases involving probation violations. See, e.g., *State v. Kesling*, 155 Idaho 673, 315 P.3d 861, 865-66 (Ct. App. 2013); *State v. Covert*, 143 Idaho 169, 170 (Ct. App. 2006).

Here, Mr. Denny seeks an award of credit for time served post-judgment involving his probation violations. (See App. Br., pp.8-9.) Thus, the applicable law in this case is not I.C. § 18-309, but I.C. § 19-2603.

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, Mr. Denny respectfully requests that this Court vacate the district court's order denying his third motion for credit for time served, and remand the case to the district court for an order granting Mr. Denny proper credit for time served pursuant to I.C. § 19-2603.

DATED this 8th day of August, 2014.


BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of August, 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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