

3-9-2015

Sims v. State Respondent's Brief Dckt. 41942

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Sims v. State Respondent's Brief Dckt. 41942" (2015). *Idaho Supreme Court Records & Briefs*. 5315.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/5315

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

CULLEN R. SIMS,)	
)	No. 41942
Petitioner-Appellant,)	
)	Ada Co. Case No.
vs.)	CV-2013-14989
)	
STATE OF IDAHO,)	
)	
Respondent.)	
_____)	

BRIEF OF RESPONDENT

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

HONORABLE LYNN G. NORTON
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

ERIC D. FREDERICKSEN
Deputy State Appellate
Public Defender
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
RESPONDENT

ATTORNEY FOR
PETITIONER-APPELLANT

FILED - COPY

MAR - 9 2015

Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature Of The Case	1
Statement Of The Facts And Course Of The Proceedings	1
ISSUE	3
ARGUMENT	4
Sims Failed To Present Evidence Supporting A <i>Prima Facie</i> Claim Of Ineffective Assistance Of Counsel.....	4
A. Introduction.....	4
B. Standard Of Review	4
C. Sims Presented No Evidence Of Deficient Performance Or Prejudice	5
CONCLUSION.....	10
CERTIFICATE OF SERVICE.....	10
APPENDIX A	

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Davis v. State</u> , 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989).....	6
<u>Ferrier v. State</u> , 135 Idaho 797, 25 P.3d 110 (2001).....	5
<u>Gibson v. State</u> , 110 Idaho 631, 718 P.2d 283 (1986)	6
<u>Hill v. Lockhart</u> , 474 U.S. 52 (1985).....	9
<u>Missouri v. McNeely</u> , 133 S.Ct. 1552 (2013).....	4, 7, 8
<u>Nellsch v. State</u> , 122 Idaho 426, 835 P.2d 661 (Ct. App. 1992)	5
<u>Padilla v. Kentucky</u> , 559 U.S. 356 (2010).....	9
<u>Piro v. State</u> , 146 Idaho 86, 190 P.3d 905 (Ct. App. 2008)	6
<u>Pratt v. State</u> , 134 Idaho 581, 6 P.3d 831 (2000)	5
<u>Roe v. Flores-Ortega</u> , 528 U.S. 470 (2000).....	9
<u>Sanchez v. State</u> , 127 Idaho 709, 905 P.2d 642 (Ct. App. 1995).....	6
<u>Shoger v. State</u> , 148 Idaho 622, 226 P.3d 1269 (Ct. App. 2010)	6
<u>State v. Arrotta</u> , 157 Idaho 773, 339 P.3d 1177 (2014).....	8
<u>State v. Boehm</u> , 2015 WL 774131 (Idaho App., Feb. 25, 2015).....	7, 8
<u>State v. Charboneau</u> , 116 Idaho 129, 774 P.2d 299 (1989).....	5
<u>State v. DeWitt</u> , 145 Idaho 709, 184 P.3d 215 (Ct. App. 2008)	6
<u>State v. Kopsa</u> , 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).....	8
<u>State v. Lovelace</u> , 140 Idaho 53, 90 P.3d 278 (2003)	5
<u>State v. Sims</u> , 2014 Unpublished Opinion No. 626 (Idaho App., July 17, 2014)	1

Strickland v. Washington, 466 U.S. 668 (1984)..... 5

Workman v. State, 144 Idaho 518, 164 P.3d 798 (2007) 5

STATUTES

I.C. § 19-4906 5

STATEMENT OF THE CASE

Nature Of The Case

Cullen R. Sims appeals from the summary dismissal of his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

The state charged Sims with felony eluding, aggravated felony DUI, felony possession of a controlled substance, and misdemeanor resisting and obstructing an officer. (R., pp. 68-70.) Pursuant to a plea agreement, Sims pled guilty to the aggravated DUI charge and the state dismissed the other charges. (R., pp. 71-73.¹)

Sims filed a petition for post-conviction relief alleging, among other things, that his counsel was ineffective for not filing a motion to suppress evidence of his blood draw. (R., pp. 4-6.) In his affidavit Sims asserted his blood “was taken from me and given to the police” without his consent or a warrant. (R., p. 10.) He further stated, “If the Motion to suppress would have prevailed, I would not have entered into the plea of guilty.” (R., p. 11.) Sims also asserted he requested his attorney to move to suppress the evidence but the attorney told him such a motion would be without merit. (R., p. 11.)

The state moved for summary dismissal of the petition on the basis that it was unsupported by admissible evidence sufficient to show a viable claim of ineffective assistance of counsel. (R., pp. 101-04.) The district court granted

¹ A more detailed factual and procedural history is set forth in State v. Sims, 2014 Unpublished Opinion No. 626 (Idaho App., July 17, 2014), a copy of which is attached to this brief as an appendix for the Court’s convenience.

partial summary dismissal, dismissing the claims of ineffective assistance of counsel. (R., pp. 108-120.)

The district court denied the remainder of the petition after an evidentiary hearing. (R., pp. 125-131.) Sims filed a notice of appeal timely from the final judgment. (R., pp. 132-135.)

ISSUE

Sims states the issue on appeal as:

Did the district court err in dismissing Mr. Sims' petition for post-conviction relief without conducting an evidentiary hearing on his claim that his trial attorney failed to consult with him and file a motion to suppress the results of the warrantless, non-consensual blood draw conducted upon him?

(Appellant's brief, p. 4.)

The state rephrases the issues as:

Did Sims fail to present admissible evidence supporting a claim of ineffective assistance of counsel?

ARGUMENT

Sims Failed To Present Evidence Supporting A *Prima Facie* Claim Of Ineffective Assistance Of Counsel

A. Introduction

The district court dismissed the claim of ineffective assistance of counsel for failing to file a motion to suppress because “the allegations are generally stated and not supported by material facts or are merely conclusory” because Sims alleged that a motion to suppress the blood test should have been filed but did “not provide additional detail, facts, or evidence as to the basis for filing such motion, or if filed, how the motion would have been successful.” (R., p. 112.) On appeal Sims “asserts that the district court erred in dismissing his claim that his attorney was ineffective for failing to discuss the ramifications of [Missouri v. McNeely, 133 S.Ct. 1552 (2013),] move to withdraw his guilty plea, and file a motion to suppress.” (Appellant’s brief, p. 5.) There are several significant flaws in this argument, namely that Sims never claimed his attorney was ineffective for failing to file a motion to withdraw his guilty plea and his claim of ineffective assistance of counsel for not filing a suppression motion is not supported by evidence. Application of the relevant legal standards to the record in this case shows the district court correctly granted summary dismissal of this claim.

B. Standard Of Review

In reviewing the summary dismissal of a post-conviction application, the appellate court reviews the record to determine if a genuine issue of material fact exists which, if resolved in petitioner's favor, would require relief to be granted.

Nellsch v. State, 122 Idaho 426, 434, 835 P.2d 661, 669 (Ct. App. 1992). The court freely reviews the district court's application of the law. Id. at 434, 835 P.2d at 669. The court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001).

C. Sims Presented No Evidence Of Deficient Performance Or Prejudice

"Idaho Code § 19-4906 permits a court to rule summarily on applications for post-conviction relief." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) "A court may grant the motion of either party under I.C. § 19-4906(c), or may dismiss the application sua sponte under I.C. § 19-4906(b)." Id. Summary disposition of a post-conviction petition "is appropriate if the applicant's evidence raises no genuine issue of material fact." Id. at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)). "To withstand summary dismissal, a post-conviction applicant must present evidence establishing a prima facie case as to each element of the claims upon which the applicant bears the burden of proof." State v. Lovelace, 140 Idaho 53, 72, 90 P.3d 278, 297 (2003) (citing Pratt v. State, 134 Idaho 581, 583, 6 P.3d 831, 833 (2000)).

In order to prove a claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). Where the claim of ineffectiveness is failure to make a motion, the "conclusion that the motion, if pursued, would not have been granted by the trial court, is generally

determinative of both prongs of the [*Strickland*] test.” Sanchez v. State, 127 Idaho 709, 713, 905 P.2d 642, 646 (Ct. App. 1995).

Sims presented no evidence that his counsel performed deficiently in not filing a motion to suppress. An attorney’s performance is not constitutionally deficient unless it falls below an objective standard of reasonableness, and there is a strong presumption that counsel’s conduct is within the wide range of reasonable professional assistance. Gibson v. State, 110 Idaho 631, 634, 718 P.2d 283, 286 (1986); Davis v. State, 116 Idaho 401, 406, 775 P.2d 1243, 1248 (Ct. App. 1989). “Although the failure to advance an established legal theory may result in ineffective assistance of counsel under *Strickland*, the failure to advance a novel theory will not.” Piro v. State, 146 Idaho 86, 91-92, 190 P.3d 905, 910-11 (Ct. App. 2008). Thus, mere failure to anticipate a change in the law will not constitute deficient performance. Shoger v. State, 148 Idaho 622, 630, 226 P.3d 1269, 1277 (Ct. App. 2010).

Sims alleged that his attorney told him, prior to his entry of a guilty plea, that a motion to suppress would be without merit. (R., p. 11.) That statement was undoubtedly true. At and before the time Sims entered his guilty plea the controlling precedent was State v. DeWitt, 145 Idaho 709, 184 P.3d 215 (Ct. App. 2008). Like Sims, DeWitt was unconscious in a hospital, following a traffic accident, when his blood was drawn. Id. at 711, 184 P.3d at 217. The Idaho Court of Appeals determined the blood draw was reasonable under both the exigent circumstances and the implied consent warrant exceptions. Id. at 711-14, 184 P.3d at 217-20. Because the holding of DeWitt would have been

controlling, there was no reason at or before the entry of the plea to believe that a motion to suppress would have been successful.

To circumvent the problem that counsel's advice was undoubtedly sound at the time it was given, Sims' appellate counsel attempts to effectively amend Sims' petition. On appeal Sims asserts trial counsel's deficiency was *failing to move to withdraw the guilty plea* in order to pursue a motion to suppress pursuant to Missouri v. McNeely, 133 S.Ct. 1552 (2013), which was decided after Sims' entry of plea but before his sentencing. (Appellant's brief, p. 5.²) That, however, was the not the claim Sims asserted in his petition, which makes no mention of any motion to withdraw the plea. (R., p. 5.) Likewise, in his affidavit Sims contended he "would not have entered" a guilty plea had counsel made a successful motion to suppress, but does not allege he would have moved to withdraw the guilty plea he entered in order to pursue a motion to suppress. (R., pp. 10-11.) Sims' argument that the district court erred by dismissing a claim that was not actually presented is meritless.

Even if the claim that counsel was ineffective for not moving to withdraw Sims' guilty plea had been made it is without merit. In State v. Boehm, ___ Idaho ___, ___ P.3d ___, 2015 WL 774131 (Idaho App., Feb. 25, 2015), the defendant moved to withdraw her guilty plea to misdemeanor DUI to pursue a suppression motion under McNeely. Id. at *1. The Court of Appeals was "not persuaded that the issuance of *McNeely* provided a just reason for Boehm to withdraw her guilty

² Sims also specifically relies on Idaho Supreme Court precedents from October and December, 2014, as the basis for his hypothetical suppression motion and motion to withdraw his plea. (Appellant's brief, pp. 10, 13.) These cases were decided months after the Idaho Court of Appeals decided Sims' direct appeal.

plea” because “*McNeely*, by itself, did not analyze implied consent.” *Id.* at *7. Counsel was not ineffective for failing to make exactly the same motion found to have been properly denied in *Boehm*.

Finally, Sims presented no evidence showing he would have been entitled to suppression under any law that existed then or now. The only factual basis for Sims’ claim is that, while he was unconscious at the hospital, “[his] blood was taken from [him] and given to the Police.” (R., p. 10.) Sims does not even allege any improper state action that would implicate the Fourth Amendment. *State v. Kopsa*, 126 Idaho 512, 517, 887 P.2d 57, 62 (Ct. App. 1994) (it is “firmly established” that the Fourth Amendment is not violated by private searches).

Even if there were state action, and accepting that the blood draw was conducted without a warrant or express consent, Sims has not shown the search to be constitutionally unreasonable. Although *McNeely* certainly removes any *per se* exigency argument, it does not prevent the state from showing an exigency in fact. *McNeely*, 133 S.Ct. at 1563 (state may show exigency “in a specific case”). Likewise, even if Sims were entitled to application of the Idaho Supreme Court’s recent decisions on implied consent, such would not prevent the state from showing that implied consent was given by the act of driving and not subsequently withdrawn. *State v. Arrotta*, 157 Idaho 773, ___, 339 P.3d 1177, 1178 (2014) (implied consent may be withdrawn). Sims has presented no evidence tending to show that these warrant exceptions would not have applied in his case.

There is no viable claim of deficient performance in this record. Under the law in existence at the time of the guilty plea there was no viable basis for a suppression motion. McNeely was decided after entry of the plea and would not have provided a just reason for withdrawal of the guilty plea. Although McNeely did limit the scope of the exigent circumstances exception, it did not address the scope of implied consent. Implied consent was not limited by the Idaho Supreme Court until 18 months later. Even if Sims were given the benefit of current law limiting the scope of both exigency and implied consent, he has failed to present any evidence that suppression would have been appropriate. Because there is no evidence showing Sims could have prevailed on a motion to suppress at any time, much less that counsel elected to not file a suppression motion based on an objective shortcoming, there is no viable claim of deficient performance.

Likewise, there is no evidence of prejudice. When the alleged deficiency involves counsel's advice in relation to a guilty plea, "in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58 (1985) (footnote and citations omitted). "Moreover, to obtain relief on this type of claim, a petitioner must convince the court that a decision to reject the plea bargain would have been rational under the circumstances." Padilla v. Kentucky, 559 U.S. 356, 372 (2010) (citing Roe v. Flores-Ortega, 528 U.S. 470 (2000)).

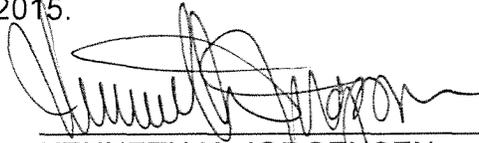
Sims made the naked claim he "would not have entered into a plea of guilty" if he successfully suppressed evidence of the blood draw (R., pp. 10-11),

but neither claimed nor presented evidence that he would have abandoned the plea agreement dismissing two other felonies to pursue what was at that time (and still is currently) a completely speculative motion to suppress. Moreover, he presented no evidence that he would have chosen to go to trial. Because Sims presented no evidence of deficient performance or prejudice, the district court properly summarily dismissed Sims' claim of ineffective assistance of counsel.

CONCLUSION

The state requests this Court to affirm the district court's order summarily dismissing Sims' claim of ineffective assistance of counsel for not filing a motion to suppress evidence of a blood draw.

DATED this 9th day of March, 2015.



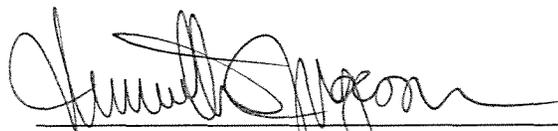
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of March, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by causing a copy addressed to:

ERIC D. FREDERICKSEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm

APPENDIX A

RECEIVED

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

JUL 17 2014

Docket No. 41078

OFFICE OF THE ATTORNEY GENERAL
CRIMINAL DIVISION

STATE OF IDAHO,)	2014 Unpublished Opinion No. 626
)	
Plaintiff-Respondent,)	Filed: July 17, 2014
)	
v.)	Stephen W. Kenyon, Clerk
)	
CULLEN ROBERT SIMS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Lynn G. Norton, District Judge.

Orders denying motions for credit for time served, affirmed.

Sara B. Thomas, State Appellate Public Defender; Shawn F. Wilkerson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Cullen Robert Sims appeals from the district court's orders denying his motions for credit for time served. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

On August 9, 2012, police observed Sims driving and attempted to stop him in order to serve him with an arrest warrant for a parole violation. Sims failed to stop, rammed his vehicle into a police vehicle, struck another police vehicle, and sped away. While fleeing, Sims collided with a third party. The crash resulted in an injury to the third party and an injury to Sims's passenger. Sims was transported to a hospital for treatment of his injuries and a possible drug overdose.

On October 17, 2012, the state filed a complaint charging Sims with two offenses--felony eluding a peace officer and misdemeanor resisting or obstructing officers. An arrest warrant



issued and an officer served Sims with the warrant on November 21, 2012. On January 16, 2013, the state filed an amended complaint charging Sims with felony eluding a peace officer; aggravated driving under the influence (DUI); possession of methamphetamine; felony destruction, alteration, or concealment of evidence; and misdemeanor resisting or obstructing officers. A magistrate bound Sims over on all but the destruction of evidence charge, and the state filed a corresponding information.

Pursuant to a plea agreement, Sims pled guilty to aggravated DUI, I.C. § 18-8006, and the state dismissed the remaining charges. The district court imposed a unified sentence of fifteen years, with a minimum period of confinement of seven and one-half years. The district court ordered that Sims receive credit for time served in the amount of 191 days (starting from the date of arrest on November 21, 2012, and ending at his sentencing hearing on May 30, 2013).

After sentencing, Sims sent the district court a letter requesting credit for 295 days. Sims contended officers arrested him for the aggravated DUI on August 9, 2012. The district court treated the letter as an I.C.R. 35 motion for credit for time served and denied it. The district court reasoned Sims was not arrested until November 21, 2012, and that, although Sims may have been in custody on other charges preceding that date, because the arrest warrant was not issued until October 17, 2012, Sims was at large for at least a month before his arrest. Sims thereafter filed another motion for credit for time served and included an affidavit and attachments in support thereof. Sims again asserted he was arrested for the aggravated DUI on the day of the offense (August 9, 2012). The district court found that the evidence submitted by Sims did not demonstrate he was incarcerated on the date of the incident. Accordingly, the district court denied Sims's motion. Sims appeals.

II.

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 this Court. *State v. Vasquez*, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005). We defer to the district court's findings of facts, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous. *State v. Covert*, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006).

III.
ANALYSIS

Sims contends the district court's finding that he was not incarcerated on the date of the incident is clearly erroneous. Sims also contends that, although he was served with the arrest warrant on November 21, 2012, he was actually arrested August 9, 2012, for aggravated DUI. The state concedes Sims was incarcerated on the date of the incident.¹ However, the state argues this incarceration was not attributable to the aggravated DUI charge but, rather, to a parole violation in a separate case.

The award of credit for time served is governed by I.C. § 18-309, which provides in pertinent part:

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 the sentence

The statute's phrase "if such incarceration was for the offense or an included offense for which the judgment was entered" 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; *State v. Akin*, 139 Idaho 160, 164, 75 P.3d 214, 218 (Ct. App. 2003); *State v. Hale*, 116 Idaho 763, 765, 779 P.2d 438, 440 (Ct. App. 1989). If a particular period of confinement served prior to the imposition of a sentence is not attributable to the charge or conduct for which a sentence is to be imposed, the offender is not entitled to credit for such confinement; neither does the sentencing judge err by denying credit under such circumstances. *Hale*, 116 Idaho at 765, 779 P.2d at 440.

Sims argues the district court erred because one of the police reports following the August 9, 2012, incident contains the following statement, "Sims was then taken into custody for felony eluding and his outstanding felony parole violation." However, an officer's narrative in a

¹ The district court's finding that Sims was not incarcerated is clearly erroneous. However, because we conclude the district court did not fail to award Sims any credit to which he was due, remand is not necessary. *State v. Pierce*, 107 Idaho 96, 102, 685 P.2d 837, 843 (Ct. App. 1984) (Where a ruling in a criminal case is correct, though based upon an incorrect reason, it still may be sustained upon the proper legal theory.).

police report is not dispositive of whether Sims's incarceration was attributable to the aggravated DUI. Rather, that is a legal determination for this Court to make. The record demonstrates that the state did not file a complaint in the aggravated DUI case until October 17, 2012. A warrant was issued for Sims's arrest on this same date. Moreover, the record demonstrates officers served Sims with the arrest warrant on November 21, 2012. Thus, we hold Sims's incarceration could not have been attributable to the aggravated DUI charge until he was arrested on that charge on November 21, 2012.

Sims further contends the district court erred as a matter of law by concluding service of an arrest warrant constitutes incarceration. This argument misses the mark. The relevant inquiry is whether Sims's incarceration from August 9, 2012, to November 21, 2012, was attributable to the aggravated DUI charge. Given that that complaint was not filed until October 17, 2012, and the warrant was not served until November 21, 2012, Sims's argument is untenable. The record demonstrates that Sims's incarceration from August 9, 2012, to November 21, 2012, was attributable to a separate, no-bond warrant for a parole violation.

We recognize that *State v. Horn*, 124 Idaho 849, 865 P.2d 176 (Ct. App. 1993), may call into question the correctness of the credit given in this case. In *Horn*, the state filed a complaint in Ada County charging the defendant with forgery. An Ada County warrant was served on Horn at the Gem County jail, where Horn awaited disposition of unrelated criminal charges. After disposition, the state transferred Horn to Canyon County to answer unrelated criminal charges. The state then transferred Horn to Owyhee County to respond to more unrelated criminal charges and thereafter to Elmore County, where even more unrelated criminal charges were pending. At the conclusion of the Elmore County case, the state remanded Horn to the custody of the Board of Correction to serve his sentence. Approximately 200 days after service of the arrest warrant, Horn was brought before a magistrate in Ada County and arraigned. *Id.* at 849, 865 P.2d at 176. The magistrate released Horn on his own recognizance. Horn was never incarcerated in the Ada County jail in connection with that warrant. On appeal, this Court held Horn was not entitled to the 271 days that elapsed between service of the Ada County arrest warrant and sentencing on those charges because Horn was incarcerated in different counties on unrelated criminal charges. *Id.* at 851, 865 P.2d at 178. Thus, the incarceration was not attributable to the charge or conduct for which the Ada County sentence was imposed. *Id.* at 850, 865 P.2d at 177. This Court further explained that the determining factor was one of

causation--whether the presentence incarceration was caused by the charge for which the sentence was being imposed. *Id.* Pursuant to this analysis, the district court may have granted Sims more credit than that to which he was due. However, the state has not cross-appealed the decision of the district court and does not challenge the amount of credit awarded to Sims. Therefore, we do not address this issue further.

IV.

CONCLUSION

The district court did not fail to award Sims any credit to which he was due. Accordingly, we affirm the district court's orders denying Sims's motions.

Judge LANSING and Judge GRATTON, **CONCUR.**