

9-10-2015

## State v. Taylor Respondent's Brief Dckt. 42774

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

### Recommended Citation

"State v. Taylor Respondent's Brief Dckt. 42774" (2015). *Idaho Supreme Court Records & Briefs*. 5673.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/5673](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/5673)

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](mailto:annablaine@uidaho.edu).

COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 42774
Plaintiff-Respondent,	)	
	)	Ada Co. Case No.
vs.	)	CR-2012-12658
	)	
LANCE TYRELL TAYLOR	)	
AKA GREEN,	)	
	)	
Defendant-Appellant.	)	

03-09-2015 10:40 AM  
 10/10/2015 10:40 AM

---

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 RICHARD D. GREENWOOD  
 District Judge

---

LAWRENCE G. WASDEN  
 Attorney General  
 State of Idaho

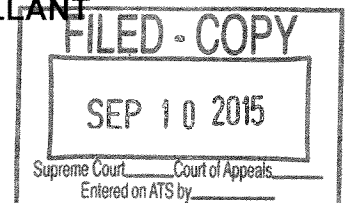
BRIAN R. DICKSON  
 Deputy State Appellate  
 Public Defender  
 P. O. Box 2816  
 Boise, Idaho 83701  
 (208) 334-2712

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  
 PLAINTIFF-RESPONDENT

ATTORNEY FOR  
 DEFENDANT-APPELLANT



IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

STATE OF IDAHO,	)	
	)	No. 42774
Plaintiff-Respondent,	)	
	)	Ada Co. Case No.
vs.	)	CR-2012-12658
	)	
LANCE TYRELL TAYLOR	)	
AKA GREEN,	)	
	)	
Defendant-Appellant.	)	

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 RICHARD D. GREENWOOD  
District Judge

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

BRIAN R. DICKSON  
Deputy State Appellate  
Public Defender  
P. O. Box 2816  
Boise, Idaho 83701  
(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  
PLAINTIFF-RESPONDENT

ATTORNEY FOR  
DEFENDANT-APPELLANT

**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
TABLE OF AUTHORITIES .....	iii
STATEMENT OF THE CASE .....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUES .....	3
ARGUMENT .....	4
I. Taylor Has Failed To Show Error In The District Court's Ruling On The Motion To Amend The Judgment .....	4
A. Introduction .....	4
B. Standard Of Review .....	4
C. Taylor Failed To Preserve The Claim For Credit For Time Served As Drug Court Sanctions Because He Did Not Request This Credit In His Motions To Amend The Judgment .....	5
D. Taylor Was Not Entitled To Credit For Time Served As Sanctions For Drug Court Violations .....	6
II. Taylor Has Failed To Show That Amendments To Idaho Statutes Regarding Computation Of Credit For Time Served Should Be Given Retroactive Effect .....	9
A. Introduction .....	9
B. Standard Of Review .....	9
C. Taylor's Claim That The Amendments To I.C. §§ 18-309 And 19-2603 Should Be Given Retroactive Effect Is Meritless .....	9

CONCLUSION .....12  
CERTIFICATE OF SERVICE.....12

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Bryant v. City of Blackfoot</u> , 137 Idaho 307, 48 P.3d 636 (2002).....	10
<u>Guzman v. Piercy</u> , 155 Idaho 928, 318 P.3d 918 (2014).....	9, 10
<u>Leavitt v. Craven</u> , 154 Idaho 661, 302 P.3d 1 (2012).....	10
<u>State v. Carlson</u> , 134 Idaho 389, 3 P.3d 67 (Ct. App. 2000) .....	5
<u>State v. Covert</u> , 143 Idaho 169, 139 P.3d 771 (Ct. App. 2006).....	4, 6
<u>State v. Davis</u> , 139 Idaho 731, 85 P.3d 1130 (Ct. App. 2003).....	4
<u>State v. Denny</u> , 157 Idaho 217, 335 P.3d 62 (Ct. App. 2014) .....	6
<u>State v. Dorn</u> , 140 Idaho 404, 94 P.3d 709 (Ct. App. 2004).....	9
<u>State v. Hale</u> , 116 Idaho 763, 779 P.2d 438 (Ct. App. 1989) .....	4
<u>State v. Perry</u> , 150 Idaho 209, 245 P.3d 961 (2010).....	5
<u>State v. Thompson</u> , 140 Idaho 796, 102 P.3d 1115 (2004).....	9
<u>State v. Vasquez</u> , 142 Idaho 67, 122 P.3d 1167 (Ct. App. 2005).....	4
<u>Verska v. Saint Alphonsus Regional Medical Center</u> , 151 Idaho 889, 265 P.3d 502 (2011).....	10
 <u>STATUTES</u>	
I.C. § 18-309 .....	6, 7
I.C. § 19-2603 .....	6, 7
I.C. § 67-510 .....	10
 <u>OTHER AUTHORITIES</u>	
2015 Idaho Sess. Laws, Ch. 99, § 1 .....	11
2015 Idaho Sess. Laws, Ch. 99, § 2 .....	11

## STATEMENT OF THE CASE

### Nature Of The Case

Lance Tyrell Taylor appeals from the district court's order denying him credit for time served as a condition of probation.

### Statement Of The Facts And Course Of The Proceedings

Taylor pled guilty to one count of grand theft. (R., pp. 58-67). The district court imposed but suspended a sentence of 10 years with two years determinate and ordered Taylor to complete drug court. (R., pp. 73, 86-90.) Taylor was later expelled from drug court and the district court revoked his probation. (R., pp. 123, 127-30.<sup>1</sup>) The court awarded Taylor credit for 211 days served pre-judgment and 81 days served after his arrest on the warrant for the probation violation in its June 19, 2014 order. (R., pp. 127-29.)

On July 7, 2014, Taylor filed a *pro se* motion for credit for time served. (R., p. 139.) His counsel thereafter filed a motion to amend the judgment, requesting credit for 227 days for incarceration from August 13, 2012 until March 27, 2013 and 107 days of post-judgment incarceration. (R., pp. 143-44.) The district court granted the motion to amend the judgment in part and denied it in part. (R., pp. 146-48.) Specifically, the court granted credit for the entire 107 days of post-judgment incarceration requested, but maintained the 211 days credit for pre-judgment time served. (R., p. 152 (and 107 days for time served "on the probation violation").) The court entered its amended order revoking

---

<sup>1</sup> At this time the district court also reduced the sentence to seven years with two years determinate. (R., p. 128.)

probation, which included the new grant of credit for time served, on August 6, 2014. (R., p. 150.)

Taylor filed a second motion to amend the judgment on September 22, 2014, which is identical to the motion he filed on August 1, 2014 (including another request for the 107 days post-judgment credit already granted), except that it addends documents. (R., pp. 158-65 (*compare* R., pp. 143-44).) The district court concluded that Taylor was entitled to 226 days credit for time served from August 13, 2012, the date of original arrest, until March 26, 2013, the date of sentencing, and for 107 days post-judgment credit, entering its order on November 24, 2014. (R., pp. 188-90.) Taylor filed a timely notice of appeal. (R., pp. 201-02.)



## ISSUES

Taylor states the issue on appeal as:

Whether the district court erred in its calculation of the credit for time served to which Mr. Taylor was entitled.

(Appellant's brief, p. 8.)

The state rephrases the issues as:

1. Has Taylor failed to show error in the district court's ruling on the motion to amend the judgment?
2. Has Taylor failed to show that amendments to Idaho statutes regarding computation of credit for time served were intended by the Idaho Legislature to be given retroactive effect?

## ARGUMENT

### I.

#### Taylor Has Failed To Show Error In The District Court's Ruling On The Motion To Amend The Judgment

##### A. Introduction

Taylor's motion to amend the judgment requested a total of 334 days credit for time served, 227 days (from 8/13/12 to 3/27/13) for incarceration after his arrest until his sentencing and 107 days (from 2/26/14 to 6/12/14) for incarceration related to his probation violation. (R., pp. 143-44, 158-65.) The district court granted credit for 333 days (all but March 27, 2013). (R., pp. 188-90.) On appeal Taylor claims he was entitled to credit for time served as drug court sanctions. (Appellant's brief, pp. 9-20). This claim fails because it is not preserved for appellate review and because Taylor has failed to show entitlement to credit for time served.

##### 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)). The appellate courts "defer to the trial court's findings of fact, however, 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) (citing State v. Davis, 139 Idaho 731, 734, 85 P.3d 1130, 1133 (Ct. App. 2003)).

C. Taylor Failed To Preserve The Claim For Credit For Time Served As Drug Court Sanctions Because He Did Not Request This Credit In His Motions To Amend The Judgment

“It is a fundamental tenet of appellate law that a proper and timely objection must be made in the trial court before an issue is preserved for appeal.” State v. Carlson, 134 Idaho 389, 398, 3 P.3d 67, 76 (Ct. App. 2000). Absent a timely objection, the appellate courts of this state will only review an alleged error under the fundamental error doctrine. State v. Perry, 150 Idaho 209, 227, 245 P.3d 961, 979 (2010).

In his motion to amend the judgment Taylor did not request credit for time served at the order of the drug court. (R., pp. 143-44, 158-65.) The prosecution, in responding to Taylor’s second motion to amend, noted that Taylor had been incarcerated as a sanction for drug court violations (R., pp. 175-76), but specifically pointed out that such incarceration was not within the scope of the pending motion (R., pp. 184 (“Mr. Taylor has not asked for credit towards his sentence” for the drug court ordered incarcerations), 185 (“It is also telling that Mr. Taylor does not request credit for those periods of incarceration.”).) The district court denied Taylor’s first motion for credit for time served on the basis that it was not filed by counsel. (R., p. 148.) Taylor has not challenged this ruling. (Appellant’s brief.) There is no ruling in the record on Taylor’s second *pro se* motion. Because Taylor did not include a request for credit for time served as a result of drug court sanctions in his motion to amend the judgment, and has further failed to claim fundamental error, he has failed to preserve this claim of error for appellate review.

D. Taylor Was Not Entitled To Credit For Time Served As Sanctions For Drug Court Violations

A criminal defendant “shall receive credit in the judgment for any period of incarceration prior to the entry of judgment.” I.C. § 18-309. In this case, judgment was entered on March 26, 2013, when the court sentenced Taylor. (R., p. 73.) He was thus entitled to, and was given credit for, his incarceration from his arrest on August 13, 2012 until entry of judgment and the start of probation on March 26, 2013. (R., p. 189.)

“Generally, I.C. § 19-2603 governs credit for time served as it relates to the revocation of probation.” State v. Denny, 157 Idaho 217, 219, 335 P.3d 62, 64 (Ct. App. 2014); see also I.C. § 18-309 (when “the defendant by any legal means is temporarily released from . . . imprisonment and subsequently returned thereto, the time during which he was at large must be computed as part of” his term of imprisonment). Idaho Code § 19-2603 provides that the time a defendant is “at large under [a] suspended sentence shall not be counted as a part of the term of his sentence, but the time of the defendant’s sentence shall count from the date of service of [the] bench warrant.” Thus, “[i]f a probationer has been arrested for a probation violation, the defendant’s incarceration from the time of service of the bench warrant will count as part of the sentence.” State v. Covert, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006) (citations omitted). Review of the record shows Taylor was granted full credit for time served from his arrest on the charges underlying the probation violations. (R., pp. 152 (granting the requested 107 days served “on the probation violation”), 189-90.)

On appeal Taylor seeks credit for the time he was incarcerated on drug court orders. He is not entitled to this credit for time served under I.C. § 18-309 because his sentence was still suspended at all relevant times. Likewise, he was not arrested for a probation violation, and therefore not entitled to credit under I.C. § 19-2603. Taylor has failed to show any statute under which he is entitled to credit for time served as a drug court sanction.

Moreover, his claim that he was not subject to serving such sanctions without credit for time served does not withstand scrutiny. At the sentencing hearing at which probation was granted Taylor was provided several orders and notices regarding drug court. The drug court advisory form instructed Taylor that he could be sanctioned, including revocation of his own recognizance release, for violating drug court rules, using controlled substances or alcohol, or tampering with testing. (R., p. 78.) Taylor was also advised he could be “held without bond *for an indeterminate period of time*” if he was “in violation of any condition of [his] drug court agreement.” (Id. (emphasis original).) Another order provided that if Taylor violated conditions relating to drug court he could be “arrested and placed in jail” and “subjected to other sanctions imposed by the court.” (R., p. 84.) The record shows that Taylor was held on drug court sanctions after his release and before he was arrested for the probation violations. (R., pp. 161 (held in “temp custody ... drug court”), 163 (held for contempt of drug court).) Because any time in jail between sentencing and his arrest for violating his probation was a result of a drug court sanction (or related to a different case), Taylor has failed to show he was entitled to credit for time served.

Taylor argues that time spent in custody as a result of drug court sanctions should be applied to his credit for time served as a result of probation violations because the terms of his probation did not directly provide for any discretionary jail time as a condition of probation. (Appellant's brief, pp. 15-16.) The record, however, clearly establishes that the court ordered completion of drug court as a condition of probation and the drug court notices clearly provided that sanctions, including incarceration, could be imposed as a function of drug court. (E.g., R., p. 78 ("I agree that the Court can revoke my ROR release and impose sanctions for failing to comply with these conditions of release."); id. ("I agree that I can be held without bond *for an indeterminate period of time* if I am in violation of my drug court agreement." (emphasis original); id. ("I agree that I will be sanctioned if I test positive for alcohol or any other illegal drug."); R., p. 84 ("**If you violate any of the above conditions**, your bond or release on own recognizance can be revoked, you can be arrested and placed in jail, and you can be subjected to other sanctions imposed by the court.") (emphasis original)); R., p. 89 (imposing drug court completion as condition of probation)). Taylor's argument that he was serving his sentence or was arrested on a probation violation warrant or its equivalent is disproved by the record which shows he was in custody on drug court sanctions.

The district court concluded that Taylor was not entitled to credit for time in custody between sentencing and his arrest on probation violation allegations because those times were the result of imposition of drug court sanctions. The record supports the district court's ruling.

## II.

### Taylor Has Failed To Show That Amendments To Idaho Statutes Regarding Computation Of Credit For Time Served Should Be Given Retroactive Effect

#### A. Introduction

Taylor argues that the July 2015 amendments to I.C. §§ 18-309 and 19-2603 granting credit for time served as a condition of probation should be given retroactive effect.<sup>2</sup> (Appellant's brief, pp. 9-15.) His argument—that the legislature intended to render illegal all previously imposed sentences in which credit for time served as a condition of probation was not granted—is meritless.

#### B. Standard Of Review

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140 Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Dorn, 140 Idaho 404, 405, 94 P.3d 709, 710 (Ct. App. 2004).

#### C. Taylor's Claim That The Amendments To I.C. §§ 18-309 And 19-2603 Should Be Given Retroactive Effect Is Meritless

An Idaho statute "is not applied retroactively unless there is clear legislative intent to that effect." Guzman v. Piercy, 155 Idaho 928, 937-38, 318 P.3d 918, 927-28 (2014) (internal quotes omitted). Such clear intent may be found either by an express statement of retroactivity or in the language of the

---

<sup>2</sup> The state notes that the entirety of the proceedings in the district court were completed prior to the 2015 legislative session even starting (see R., p. 201 (notice of appeal filed 12/5/14)) and that but for Appellant's extensions of time the briefing on this appeal would have been completed before the effective date of the amendments upon which Taylor relies.

statute requiring retroactive application. Id. at 938, 318 P.3d at 928. “A statute is not made retroactive merely because it draws upon facts antecedent to its enactment” but is retroactive if it “changes the legal effect of previous transactions or events.” Bryant v. City of Blackfoot, 137 Idaho 307, 313, 48 P.3d 636, 642 (2002). “When interpreting statutes we begin with the literal words of the statute, which are the best guide to determining legislative intent.” Leavitt v. Craven, 154 Idaho 661, 667, 302 P.3d 1, 7 (2012) (internal quotes, brackets and citation omitted). If the plain language of the statute is unambiguous, “legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.” Verska v. Saint Alphonsus Regional Medical Center, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011).

In this case the district court awarded credit for time served in its June 19, 2014 order revoking probation. (R., pp. 127-29.) It amended the credit for time served in response to two motions to correct an illegal sentence, entering these orders on August 5, 2014 and November 24, 2014, respectively. (R., pp. 146, 188.) Only this second order was appealed. (R., p. 201.) The legislature passed amendments to the statutes governing credit for time served, effective July 1, 2015. I.C. § 67-510. The amendments were thus passed well after the court entered its orders.

The statutory language in the amendments shows that the legislature intended the amendments to apply *at the time the court calculated time served upon imposing judgment*. The amendment to I.C. § 18-309 provides:



In computing the term of imprisonment *when judgment has been withheld and is later entered or sentence has been suspended and is later imposed*, the person against whom the judgment is entered or imposed shall receive credit *in the judgment* for any period of incarceration served as a condition of probation under the original withheld or suspended judgment.

2015 Idaho Sess. Laws, Ch. 99, § 1, p. 240 (emphasis added). As the italicized language indicates, under the plain language of the amendment the time the statute applies is upon entry of judgment after the probation violation has been found. Likewise, the amended I.C. § 19-2603 provides:

*When* the court finds that the defendant has violated the terms and conditions of probation, it may ... revoke probation. The defendant shall receive credit for time served ... for any time served as a condition of probation under the withheld judgment or suspended sentence.

2015 Idaho Sess. Laws, Ch. 99, § 2, p. 240 (emphasis added). Again, the contemplated time-frame for the awarding of credit for time served is at the time the court revoked the probation.

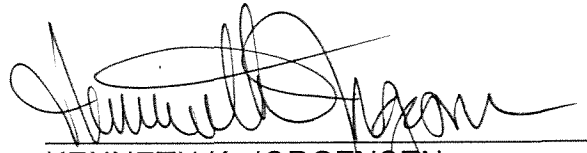
Nothing in the statutes as they existed or as amended suggests a legislative intent to render illegal prior calculations of time served. Rather, the statutes evince a clear intent that the amendments should apply only to those calculations of time served made after the amendments were effective. In this case the district court entered its order revoking probation on June 19, 2014, and that order was not appealed. (R., p. 127.) Nothing in the amendments indicates a legislative intent to render any part of that order retroactively illegal. Because the amount of credit for time served was calculated before the amendments, those amendments are simply irrelevant to this appeal.

Taylor has failed to show that the amendments he invokes were in any way applicable to legal proceedings concluded before the amendments were passed and effective. He has therefore failed to show error.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying the second motion to correct an illegal sentence.

DATED this 10th day of September, 2015.



---

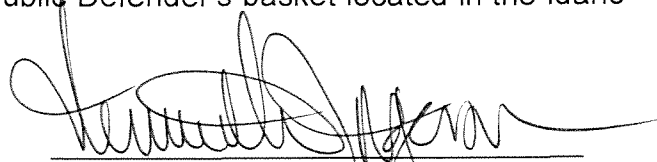
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of September, 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BRIAN R. DICKSON  
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/dd