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## State v. Hogan Respondent's Brief Dckt. 44711

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44711
Plaintiff-Respondent,	)	
	)	Twin Falls County Case No.
v.	)	CR-2005-6906
	)	
JAMES DEAN HOGAN,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Hogan failed to establish that the district court erred by denying his motion for credit for time served?

Hogan Has Failed To Establish That The District Court Erred By Denying His Motion For Credit For Time Served

On December 12, 2005, while he was on probation for a Cassia County conviction for delivery of a controlled substance, Hogan was convicted, in this Twin Falls County case, of felony injury to a child, and the district court imposed a unified sentence of 10 years, with five years fixed, suspended the sentence, and placed Hogan

on supervised probation for five years. (R., pp.66-70, 75.) Three days later, on December 15, 2005, Hogan's probation in the Cassia County case was revoked and his underlying sentence executed. (R., p.75.) Hogan remained on probation in this case throughout the period of time that he was incarcerated for the Cassia County offense; he was paroled in that case on February 19, 2009. (R., pp.191, 197.)

In 2010, Hogan violated his probation in this case and the district court extended Hogan's period of probation for two years beginning on July 6, 2010. (R., pp.125-31.) Hogan subsequently violated his probation a second time and, on December 13, 2011, the district court revoked Hogan's probation, executed the underlying sentence, and retained jurisdiction. (R., pp.168-73.) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.174-77.) Over four years later, Hogan filed a motion for credit for time served, requesting credit for the time he served in the Cassia County case while he was on probation in this case. (R., pp.190-93.) The district court denied the motion. (R., pp.203-05.) Hogan filed a notice of appeal timely only from the district court's order denying his motion for credit for time served. (R., pp.206-09.)

Mindful that "Idaho's statutes do not mandate an award of credit under the circumstances here," Hogan nevertheless asserts that the district court erred by denying his motion for credit for time served. (Appellant's brief, pp.4-5.) He provides no argument or authority in support of his claim. Hogan has failed to show error in the district court's denial of his motion for credit for time served.

The right to credit for time served is conferred only if the prejudgment incarceration is a consequence of or attributable to the charge or conduct for which the sentence is imposed. I.C. § 18-309.

An entitlement to credit under I.C. § 18-309 depends upon the answer to a simple inquiry: was the defendant's incarceration upon the offense for which he was sentenced? If a particular period of confinement served prior to the imposition of 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 (citations omitted).

State v. Hale, 116 Idaho 763, 765, 779 P.2d 438, 440 (Ct. App. 1989). A district court may only give credit for the correct amount of time actually served by the defendant.

State v. Moore, 156 Idaho 17, 21, 319 P.3d 501, 505 (Ct. App. 2014). The district court does not have discretion to award credit for time served that is either more or less than the actual time served. Id.

On appeal, Hogan acknowledges that “the incarceration for which he seeks credit” “was not served as a condition of his probation or after service of an arrest warrant for an alleged probation violation,” nor was it for the offense for which judgment was entered; rather, the actual time he served “was for the Cassia [County] case.” (Appellant’s brief, p.5.) Hogan also acknowledges, both on appeal and in his motion for credit for time served, that he was “still on probation” in this case throughout the period of time that he was incarcerated for the Cassia County offense. (Appellant’s brief, p.2; R., p.191.) Because the incarceration for which Hogan seeks credit was not attributable to the charges or conduct in the instant offense, the district court did not err in refusing to give Hogan credit in the instant case for time served on a separate Cassia County

case. Therefore, Hogan has failed to establish error in the district court's denial of his motion for credit for time served.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Hogan's motion for credit for time served.

DATED this 2<sup>nd</sup> day of June, 2017.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2<sup>nd</sup> day of June, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
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Deputy Attorney General