

8-16-2017

## State v. Brown Appellant's Brief Dckt. 43916

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	<b>NO. 43916</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>ADA COUNTY</b>
<b>v.</b>	)	<b>NO. CR 2010-1346</b>
	)	
<b>JEREMY BROWN,</b>	)	
	)	
<b>Defendant-Appellant.</b>	)	
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**BRIEF OF APPELLANT**

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**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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**HONORABLE JASON D. SCOTT  
District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

Jeremy Brown appeals from the district court's order withdrawing credit for time served. This appeal was suspended pending the Idaho Supreme Court's decision in *State v. Brand*, 162 Idaho 189, 395 P.3d 809 (May 31, 2017). In light of the Court's decision in *Brand*, Mr. Brown contends the district court erred in denying his motion for credit for time served.

### Statement of Facts and Course of Proceedings

Mr. Brown was arrested for aggravated battery on November 17, 2009, while serving a prison sentence in another case (Kootenai County Case No. CR-2005-12124). (R., pp.16, 28, 34, 56.) Mr. Brown was arraigned on February 17, 2010, and bond was set at \$10,000. (R., pp.12, 55, 56.) Mr. Brown was unable to post bond and remained in custody until he was sentenced on May 25, 2010. (R., pp.12, 14, 18.) Mr. Brown was sentenced to a unified term of six years, with two years fixed, with credit for 55 days served, representing the time served from March 30, 2010 (when the district court believed the bond requirement was valid) to May 25, 2010.<sup>1</sup> (R., pp.9, 31, 55.) The judgment was entered on May 26, 2010. (R., p.32.)

On December 21, 2015, Mr. Brown filed a motion for credit for time served pursuant to Idaho Criminal Rule 35(c), seeking credit pursuant to Idaho Code § 18-309 for an additional 43 days, so that he would receive credit for the time he was incarcerated from his arraignment on the instant offense to his sentencing. (R., pp.14-22.) Following a hearing, the district court entered an order on January 20, 2016, withdrawing credit for time served and denying Mr. Brown's motion for credit for time serve. (R., pp.55-61.) The district court concluded that

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<sup>1</sup> The district court miscalculated this period of time. Including the end date, the period of time from March 30, 2010 to May 25, 2010 is 57 days. (*See R.*, p.55.)

under *State v. Vasquez*, 142 Idaho 67 (Ct. App. 2005) and *State v. Horn*, 124 Idaho 849 (Ct. App. 1993), Mr. Brown was not entitled to any credit for time served because, during the prejudgment phase of this case, he was serving a prison sentence that had already been imposed against him in another case. (R., p.59.) The district court stated the Idaho Supreme Court “may have signaled disagreement” with the reasoning in *Vasquez* and *Horn* in *State v. Owens*, 158 Idaho 1 (2015), but nonetheless felt bound by those decisions from the Court of Appeals. (R., pp.59-60.)

Mr. Brown filed a timely notice of appeal on January 22, 2016. (R., pp.62-64.) Mr. Brown moved to suspend this appeal pending the Idaho Supreme Court’s decision on the consolidated petition for review of *State v. Brand*, No. 43441 and *State v. Nall*, No. 43442. The Idaho Supreme Court granted Mr. Brown’s motion to suspend this appeal. The Court ultimately granted the consolidated petition for review in *Brand*, and issued a published opinion in *State v. Brand*, 162 Idaho 189, 395 P.3d 809 (May 31, 2017). On July 14, 2017, the Court issued an order reinstating the appellate proceedings in this case.

ISSUE

Did the district court err in denying Mr. Brown's motion for credit for time served?

## ARGUMENT

### The District Court Erred In Denying Mr. Brown's Motion For Credit For Time Served

Idaho Code § 18-309 governs credit for time served, and states 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.

I.C. 18-309(1). In *State v. Brand*, the Idaho Supreme Court held section 18-309 mandates that a defendant receive credit for *any* period of incarceration, and it is irrelevant if the defendant's incarceration rests on several, unrelated offenses. 395 P.3d at 812. The Court explained:

Section 18-309 does not limit credit for time served only if, for example, the offense for which the defendant is jailed is that which caused the defendant's initial deprivation of liberty. Rather, section 18-309 applies to all offenses that provide a basis for the defendant's incarceration. It is irrelevant if the defendant's incarceration rests on several, unrelated offenses, as the fact remains that each offense provides a basis for the defendant's incarceration.

*Id.* The Court articulated four scenarios to provide guidance as to how credit is to be determined, the first of which is directly applicable to this case:

**Scenario 1:** Defendant is already in custody on unrelated charges. He is served with an arrest warrant which requires defendant to post bail. Defendant does not post bail and remains in custody until sentencing. Defendant is entitled to credit from the date of service of the warrant through the date of sentencing.

*Id.* at 813.

Here, Mr. Brown was in custody on unrelated charges when he was arrested for the instant offense on November 17, 2009. He did not post bail and remained in custody until sentencing on May 25, 2010. Under *Brand*, Mr. Brown was entitled to credit from November 17, 2009, to May 25, 2010, which is a period of 190 days. In its order withdrawing credit for time served, the district court denied Mr. Brown's motion for credit for time served, and withdrew credit for the 55 days previously granted. (R., pp.55-61.) "The question of



whether a sentencing court has properly awarded credit for time served on the facts of a particular case is a question of law, which is subject to free review by this Court.” *State v. Denny*, 157 Idaho 217, 219 (Ct. App. 2014). Under *Brand*, it is clear the district court erred in its construction of Idaho Code § 18-309, and should have awarded credit to Mr. Brown for 190 days served.

#### CONCLUSION

Mr. Brown respectfully requests that this Court vacate the district court’s order withdrawing credit for time served, and remand this case to the district court with instructions to grant Mr. Brown credit for 190 days served.

DATED this 16<sup>th</sup> day of August, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
ANDREA W. REYNOLDS  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16<sup>th</sup> day of August, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JEREMY BROWN  
28128 N HWY 41 #17  
SPIRIT LAKE ID 83869

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DISTRICT JUDGE  
E-MAILED BRIEF

DANICA COMSTOCK  
ADA COUNTY PUBLIC DEFENDER  
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\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

AWR/eas