

9-13-2017

State v. Brown Respondent's Brief Dckt. 43916

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

Recommended Citation

"State v. Brown Respondent's Brief Dckt. 43916" (2017). *Idaho Supreme Court Records & Briefs, All*. 6617.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/6617

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs, All 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

STATE OF IDAHO,)	
)	No. 43916
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2010-1346
)	
JEREMY BROWN,)	
)	
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 JASON D. SCOTT
District Judge**

**LAWRENCE G. WASDEN
Attorney General
State of Idaho**

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

**RUSSELL J. SPENCER
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

**ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712**

**ATTORNEY FOR
DEFENDANT-APPELLANT**

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	2
ARGUMENT	3
Brown Has Failed To Show That The District Court Erred Under The Legal Standards Applicable To His 2010 Judgment When It Denied His Rule 35 Motion For Additional Credit For Time Served	3
A. Introduction.....	3
B. Standard Of Review	3
C. Under The Legal Standards Applicable To His 2010 Judgment, Brown Was Not Entitled To Credit For Time Served	4
CONCLUSION.....	7
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Fields v. State</u> , 149 Idaho 399, 234 P.3d 723 (2010).....	4
<u>Peregrina v. State</u> , 158 Idaho 948, 354 P.3d 510 (Ct. App. 2015).....	6
<u>Rhoades v. State</u> , 149 Idaho 130, 233 P.3d 61 (2010).....	4
<u>Sawyer v. Smith</u> , 497 U.S. 227 (1990)	5
<u>Schriro v. Summerlin</u> , 542 U.S. 348 (2004)	5
<u>State v. Beer</u> , 97 Idaho 684, 551 P.2d 971 (1976)	6
<u>State v. Brand</u> , 162 Idaho 189, 395 P.3d 809 (2017).....	4, 5, 6
<u>State v. Brown</u> , Docket No. 38147, 2011 Unpublished Op. No. 489 (Idaho App., May 23, 2011).....	1
<u>State v. Dorr</u> , 120 Idaho 441, 816 P.2d 998 (Ct. App. 1991)	6
<u>State v. Horn</u> , 124 Idaho 849, 865 P.2d 176 (Ct. App. 1993).....	6
<u>State v. Jakoski</u> , 139 Idaho 352, 79 P.3d 711 (2003).....	6
<u>State v. Leary</u> , 160 Idaho 349, 372 P.2d 404 (2016)	3
<u>State v. Mares</u> , 335 P.3d 487 (Wyo. 2014).....	5
<u>State v. Owens</u> , 158 Idaho 1, 343 P.3d 30 (2015)	4, 5
<u>State v. Vasquez</u> , 142 Idaho 67, 122 P.3d 1167 (Ct. App. 2005)	6
<u>Teague v. Lane</u> , 489 U.S. 288 (1989).....	4, 5
 <u>STATUTES</u>	
I.C. § 18-309	4, 5, 6
 <u>OTHER AUTHORITIES</u>	
Black’s Law Dictionary (10th Ed. 2014).....	5

STATEMENT OF THE CASE

Nature Of The Case

Jeremy Brown appeals from the district court's order denying his Rule 35 motion for additional credit for time served.

Statement Of The Facts And Course Of The Proceedings

While incarcerated in 2009, Brown committed the crime of aggravated battery on another inmate. (38147 R., pp.16-17; R., p.34.) On May 25, 2010, pursuant to Brown's guilty plea, the district court entered judgment against Brown for aggravated battery and sentenced him to six years with two years fixed. (38147 R., pp.34-35.) Brown did not appeal from his judgment. Instead, Brown filed a Rule 35 motion for a reduction of sentence (id., pp.60-64), which the district court denied (id., p.105). Brown timely appealed the denial of his Rule 35 motion. (Id., pp.107-09.) In an unpublished opinion, the Court of Appeals affirmed the district court. State v. Brown, Docket No. 38147, 2011 Unpublished Op. No. 489 (Idaho App., May 23, 2011).

Several years later, in December 2015, Brown filed motions requesting additional credit for time served. (R., pp.7-10, 14.) Brown had previously been given 55 days credit for time served. (R., pp.9, 55.) The parties initially stipulated that Brown was entitled to a total of 99 days credit for time served. (R., p.27.) However, after reviewing the record in the underlying criminal case, the district court expressed its concerns that Brown's motion may not have been well taken and asked the parties to address its prior orders on the issue. (R., pp.34-35.) Following a hearing on the motions (R., p.54), the district court entered an order denying Brown's motion for additional credit for time served and correcting Brown's prior sentence by withdrawing the 55 days credit for time served previously granted. (R., pp.55-60.) Brown filed a timely notice of appeal. (R., pp.62-63.)

ISSUE

Brown states the issue on appeal as:

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

(Appellant's brief, p.3.)

The state rephrases the issue as:

Brown's judgment became final in 2010. Has Brown failed to show that the district court erred under the legal standards applicable to his 2010 judgment when it denied his Rule 35 motion for additional credit for time served?

ARGUMENT

Brown Has Failed To Show That The District Court Erred Under The Legal Standards Applicable To His 2010 Judgment When It Denied His Rule 35 Motion For Additional Credit For Time Served

A. Introduction

In his underlying criminal case, Brown was granted 55 days credit for time served. (R., pp.9, 55.) Below, Brown filed motions requesting an additional 44 days credit for time served for a total of 99 days credit for time served. (R., pp.7-10, 14, 27.) The district court denied Brown's motion for additional credit for time served and, after reviewing the file and finding the initial grant of 55 days to have been erroneous, also corrected Brown's sentence by withdrawing the 55 days credit for time served. (R., pp.55-60.)

Now on appeal, Brown argues that the district court erred by denying his motion for additional credit for time served and asserts that he is entitled to 190 days credit for time served. (Appellant's brief, pp.4-5.) Application of the legal standards applicable to Brown's 2010 judgment, however, shows no error by the district court in denying Brown's request.

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. Leary, 160 Idaho 349, 352, 372 P.2d 404, 407 (2016) (quotation and citations omitted).

C. Under The Legal Standards Applicable To His 2010 Judgment, Brown Was Not Entitled To Credit For Time Served

Under Idaho Code § 18-309, a defendant is entitled to credit for time served in relation to the conviction on which he is sentenced. Recently, in State v. Brand, 162 Idaho 189, ___, 395 P.3d 809, 812 (2017), the Idaho Supreme Court interpreted this statute as allowing credit even for periods of presentence incarceration that were “both initiated and maintained due to a prior, unrelated offense.” The Court also set forth various “scenarios to provide guidance as to how credit is to be determined.” Id. at ___, 395 P.3d at 813. Brown relies almost exclusively on the Brand holding for his argument that he is entitled to additional credit for time served and, focusing on the first scenario, asserts that it is controlling. (See Appellant’s brief, pp.4-5.) The state agrees that, were the Brand holding applicable to this case, it would be determinative. However, because the Court’s holding in Brand is not retroactive, it is not applicable, and Brown’s reliance is misplaced.

In the specific context of Rule 35 motions for credit for time served, the Idaho Supreme Court noted that it “explicitly adopted the retroactivity test from Teague v. Lane, 489 U.S. 288 (1989), for criminal cases on collateral review.” State v. Owens, 158 Idaho 1, 6, 343 P.3d 30, 35 (2015) (citing Rhoades v. State, 149 Idaho 130, 133, 233 P.3d 61, 64 (2010); Fields v. State, 149 Idaho 399, 401, 234 P.3d 723, 735 (2010)). Generally, new interpretations of criminal procedural rules do not apply retroactively to cases already final when the new rule is announced. Id. (citations omitted). There are two exceptions to this general rule: “(1) the rule substantively alters punishable conduct or (2) the rule is a ‘watershed’ rule implicating the fundamental fairness of the trial.” Id. (citations omitted). Neither exception applies to this case.

The first step in a retroactivity analysis is to determine whether the case announces a new rule, meaning that “the result was not *dictated* by precedent existing at the time the defendant’s

conviction became final.” Id. (emphasis original) (citing State v. Mares, 335 P.3d 487, 505 (Wyo. 2014); Teague, 489 U.S. at 301). Before Brand, the Supreme Court had never interpreted Idaho Code § 18-309 as requiring credit for periods of presentence incarceration initiated and maintained due to an unrelated offense. Thus, the result in Brand was not dictated by existing precedent and the case announced a new rule.

The second step is to determine whether the new rule meets either the substantive rule exception or the watershed rule exception to retroactivity. Id. “A rule is substantive when it alters the range of conduct or the class of persons that the law punishes.” Id. (citing Schriro v. Summerlin, 542 U.S. 348, 353 (2004)). A rule is a watershed rule when it improves accuracy and alters an understanding of the bedrock procedural elements essential to a proceeding’s fairness. Id. (citing Sawyer v. Smith, 497 U.S. 227, 242 (1990)). As in Owens, the Court’s new interpretation of Idaho Code § 18-309 “does not alter the class of persons or the conduct the law punishes”; rather, it “only alters the amount of time a person spends incarcerated after the court determines he committed punishable conduct.” Id. The Brand rule is therefore *procedural*, not substantive. Moreover, as in Owens, the Brand holding only affects punishment after trial, not a trial’s fundamental fairness, and is therefore not a watershed rule. Id.

Because the Brand holding does not meet the test for retroactivity, as in Owens, the Court’s new interpretation of Idaho Code § 18-309 can only apply prospectively and to cases now on direct review. See Id. at 7, 343 P.3d at 36. Brown’s case is not a direct appeal of his judgment; it is an appeal from the denial of a Rule 35 motion for credit for time served, which is a *collateral* attack on his underlying judgment. See BLACK’S LAW DICTIONARY (10th Ed. 2014) (defining “collateral attack” as “[a]n attack on a judgment in a proceeding other than a direct appeal”). Because Brown’s Rule 35 motion was a collateral attack on the judgment, and not a

direct review of that judgment, the Court's new interpretation of Idaho Code § 18-309 does not apply to his motion.

Because the holding of Brand cannot be given retroactive effect, Brown's Rule 35 motion challenging the legality of his sentence was limited to the law existing at the time the judgment became final. Judgment becomes final either by expiration of the time for appeal or affirmance of the judgment on appeal. See State v. Jakoski, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003). Brown did not timely appeal from his judgment, but only appealed from the denial of his initial Rule 35 motion. (See 38147 R., pp.107-09.) Brown's judgment thus became final once the time to appeal had expired, on July 6, 2010. Even had Brown's appeal from the denial of his Rule 35 motion also been timely from the judgment, his case would still have become final on June 15, 2011, when the Court of Appeals issued its remittitur. Peregrina v. State, 158 Idaho 948, 951, 354 P.3d 510, 513 (Ct. App. 2015) (where timely appeal is filed, judgment becomes final when the appellate court issues remittitur). Whether in 2010 or 2011, under the precedents then applicable to the determination of credit for time served, Brown was not entitled to any credit for time served that was due to prior unrelated offenses. See State v. Beer, 97 Idaho 684, 551 P.2d 971 (1976); State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005); State v. Horn, 124 Idaho 849, 850-51, 865 P.2d 176, 177-78 (Ct. App. 1993); State v. Dorr, 120 Idaho 441, 443, 816 P.2d 998, 1000 (Ct. App. 1991).

The district court properly credited Brown with all of the time to which he was entitled at the time judgement became final, and Brown has failed to show that the holding of Brand can be applied retroactively to challenge his final judgment. Under the precedents applicable to his case when it became final, the district court did not err in its calculation of credit for time served. The

district court's order denying Brown's Rule 35 motion for additional credit for time served should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Brown's Rule 35 motion for additional credit for time served.

DATED this 13th day of September, 2017.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of September, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd