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

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	NO. 43916
)	
Plaintiff-Respondent,)	
)	ADA COUNTY
v.)	NO. CR 2010-1346
)	
JEREMY BROWN,)	
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**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

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STATEMENT OF THE CASE

Nature of the Case

Mr. Brown appeals from the district court's order denying his motion for credit for time served and withdrawing credit for time served, arguing the district court erred in its interpretation of Idaho Code § 18-309.

Statement of Facts and Course of Proceedings

Mr. Brown included a statement of facts and course of proceedings in his Appellant's Brief. (*See* Appellant's Br., pp.1-2.) He relies on and incorporates that statement herein.

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

Mr. Brown argued in his Appellant's Brief that, based on *State v. Brand*, 162 Idaho 189, 395 P.3d 809 (May 31, 2017), the district court erred in interpreting Idaho Code § 18-309, and should have awarded credit to Mr. Brown for 190 days. (Appellant's Br., pp.4-5.) In its Respondent's Brief, the State concedes that "were the *Brand* holding applicable to this case, it would be determinative." (Respondent's Br., p.4.) The State contends, however, that the *Brand* holding is not applicable to this case, because it does not apply retroactively. (Respondent's Br., pp.4-7.) In light of the State's concession, the sole issue for this Court to determine is whether the Court's holding in *Brand* applies to this case.

In *State v. Brand*, the Court considered two cases, neither of which was on direct review from a judgment of conviction. *See Brand*, 395 P.3d at 810-11. Mr. Brand appealed from the district court's order denying his motion for credit for time served, and Mr. Nall appealed from the district court's order granting the State's motion to clarify credit for time served. *See id.* The *Brand* Court applied the plain language of Idaho Code § 18-309, and reversed the district court's orders denying credit for time served for Mr. Brand and Mr. Nall. *See id.* at 813. The Court's holding in *Brand* applies to this case, which is before the Court on the very same procedural posture as were the cases considered in *Brand*.

In *State v. Owens*, 158 Idaho 1 (2014), our Supreme Court explicitly adopted the retroactivity test from *Teague v. Lane*, 489 U.S. 288 (1989). *Owens*, 158 Idaho at 6. "The threshold question in applying the *Teague* test is whether a case announces a new rule." *Id.* When a case announces a new rule, the Court will not apply the new rule retroactively to cases on collateral review unless the rule is either a substantive rule or a watershed rule implicating

fundamental fairness. *See id.* Applying the *Teague* retroactivity analysis, the Court’s holding in *Brand* applies to this case because, first, the *Brand* Court did not announce a new rule, and second, this Case is not on collateral review.

The *Brand* Court did not announce a new rule, but simply interpreted the plain language of Idaho Code § 18-309 in light of its decision in *Owens*.¹ *See Brand*, 395 P.3d at 811-13. Because the *Brand* Court did not “break[] new ground or impose[] a new obligation” on the State, its holding is not a “new rule” for purposes of retroactivity. *See Owens*, 158 Idaho at 6 (“Generally a case announces a new rule ‘when it breaks new ground or imposes a new obligation’ on states.”) (quoting *Teague*, 489 U.S. at 301). Idaho Code § 18-309 was enacted in 1972, and has been erroneously interpreted by the courts of this State for the last thirty-five (35) years. *See Owens*, 158 Idaho at 3-4. Where, as in *Brand*, the Court corrects a prior misinterpretation of a long-existing law, it is not announcing a new rule.

Second, this case is not before the Court on collateral review, but on direct review of the district court’s order denying Mr. Brown’s motion for credit for time served. The State cites Black’s Law Dictionary for the proposition that a collateral attack is “[a]n attack on a judgment in a proceeding other than a direct appeal.” (Respondent’s Br., p.5.) Mr. Brown is not attacking the judgment in this case; instead, he is attacking—directly attacking—the district court’s order denying his motion for credit for time served. This is not a collateral attack, and this case is not

¹The Court of Appeals has held the Supreme Court’s decision in *Owens* does not apply retroactively. *See State v. Young*, No. 43917, 2017 WL 105951 (Ct. App. Jan. 11, 2017), *State v. Rios-Lopez*, No. 44212, 2017 WL 382727 (Ct. App. Jan. 27, 2017) (unpublished). On June 13, 2017, the Supreme Court granted a consolidated Petition for Review of the Court of Appeals’ decisions in *Young* and *Rios-Lopez*. The consolidated case has been assigned Case No. 45125, and is currently pending before the Supreme Court.

on collateral review. Like the cases considered by the Court in *Brand*, this case is before the Court on direct review of the district court's order on a motion for credit for time served.

Because *Brand* did not announce a new criminal rule, and because this case is not before the Court on collateral review, this Court must apply the holding in *Brand*, and reverse the district court's order denying Mr. Brown's motion for credit for time served and withdrawing credit for time served based on the court's erroneous interpretation of Idaho Code § 18-309.

CONCLUSION

For the reasons stated above, as well as those set forth in his Appellant's Brief, Mr. Brown respectfully requests that this Court vacate the district court's order denying his motion for credit for time served and 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 2nd day of October, 2017.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, as follows:

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