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### State v. Allen Appellant's Brief Dckt. 47925

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

<b>STATE OF IDAHO,</b>	)	
	)	<b>NO. 47925-2020</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>BONNEVILLE COUNTY</b>
<b>v.</b>	)	<b>NO. CR10-18-12236</b>
	)	
<b>ZACHARY TYLER ALLEN,</b>	)	<b>APPELLANT'S BRIEF</b>
	)	
<b>Defendant-Appellant.</b>	)	
<hr/>		

**BRIEF OF APPELLANT**

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF BONNEVILLE**

**HONORABLE JOEL E. TINGEY  
District Judge**

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State Appellate Public Defender  
I.S.B. #6555**

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## STATEMENT OF THE CASE

### Nature of the Case

Zachary Allen contends the district court erred by denying his motion for credit for time served.

### Statement of the Facts and Course of Proceedings

Pursuant to a plea agreement, Mr. Allen pled guilty to one count of forgery, and the State dismissed a related theft charge. (47093 R., p.35.)<sup>1</sup> On April 29, 2019, the district court imposed a unified sentence of five years, with one and one-half years fixed, and retained jurisdiction. (47093 R., p.57.)

In the judgment of conviction, the district court ordered: “The Defendant is given credit for time served on this case to date of this judgment (I.C. § 18-309).” (47093 R., p.58.) Though the district court did not specifically calculate the amount of credit to which Mr. Allen was entitled at that time (*see* 47093 R., p.58), the record indicates Mr. Allen was initially incarcerated for fifteen days on this case before being released on pretrial supervision. (*See* 47093 R., pp.10-13, 20-24.) During that period of pretrial release, he spent some time incarcerated in other counties while resolving other outstanding matters. (*See, e.g.*, 47093 Tr., p.10, Ls.9-18; 47093 R., p.42.)

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<sup>1</sup> The Supreme Court ordered the record in this appeal be supplemented with the record prepared in Mr. Allen’s prior appeal, Docket Number 47093. To avoid confusion, citations to the record will include the applicable docket number. Additionally, while the record prepared in Docket Number 47093 was provided in three different volumes, the citations in this brief are only to Volume 1.

Mr. Allen arrived at the rider facility on July 3, 2019. (47925 Conf. Exh. p.1.)<sup>2</sup> The district court subsequently relinquished jurisdiction on January 2, 2020. (47925 R., p.17.) That decision was based on the fact that Mr. Allen was requesting the district court relinquish jurisdiction himself. (47925 Conf. Exh., pp.1, 7.)

Thereafter, Mr. Allen filed a *pro se* motion for credit for time served. (47925 R., p.19.) He attached an affidavit in which he averred that IDOC staff members were telling him he would not be given credit for the time he had been in the rider program because jurisdiction had ultimately been relinquished. (47925 R., p.23.) Accordingly, he requested the district court enter an order granting him credit for all the time he was in the rider program, starting from the sentencing hearing held on April 29, 2019. (47925 R., p.23.)

In its order on that motion, the district court noted that it had ordered Mr. Allen received credit for time served in the judgment of conviction. (47925 R., p.27.) Based on that, the district court stated, “to the extent that Defendant is asking this Court to affirm that previous order, this Court grants Defendant’s motion and order that he be given credit for the time he has served incarcerated, both under this Court’s jurisdiction and under IDOC’s jurisdiction.” (47925 R., p.27.) It took no further action, though it explained that, if Mr. Allen had any remaining concerns about the Department of Correction “improperly calculate[ing] or record[ing]” the amount of time Mr. Allen was to be credited, he needed to present evidence showing such a miscalculation. (47925 R., p.27.) Absent that, it simply “assumes that IDOC has correctly tracked the time Defendant has spent incarcerated.” (47925 R., p.27.) Mr. Allen filed a notice of appeal timely only from the order denying his motion for credit for time served. (47925 R., pp.29-32.)

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<sup>2</sup> “47925 Conf. Exh.” refers to the electronic file “Confidential Exhibit Record” provided with the record in Docket Number 47925.

Subsequently, Mr. Allen filed a successive motion for credit for time served, this time asking for “credit for all local, county and state time served in conjunction with this charge, and the resulting sentence imposed by the Court.” (Aug. p.1.)<sup>3</sup> In his affidavit in support of that motion, he asserted that the Department of Correction was not properly calculating credit in his case. (Aug. pp.4-5.)

Additionally, he provided a copy of the Department of Correction’s time calculation sheet for his case in support of his motion. (Aug. p.7.) The Department’s report stated that Mr. Allen has received fifteen days of credit. (Aug. p.7.) It also indicated he was incarcerated for 65 days starting on the date he was sentenced (April 29, 2019) and was “Present at Facility” for another 341 days starting on July 3, 2019. (Aug. p.7.) Furthermore, it stated his parole eligibility date will be October 14, 2020. (Aug. p.7.)

The district court denied Mr. Allen’s successive motion for credit for time served, concluding that there was no evidence showing the Department of Correction had miscalculated the time for which Mr. Allen was entitled to credit. (Aug. p.9.) It also noted that Mr. Allen had not succinctly identified the time for which he contends he was in custody but for which he is not getting credit.<sup>4</sup> (Aug. p.9.) Without such information, the district court maintained that it “must presume that IDOC has correctly tracked the time Defendant has spent incarcerated.” (Aug. p.9.)

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<sup>3</sup> A motion to augment the record with the documents associated with Mr. Allen’s new motion for credit for time served has been filed contemporaneously with this brief.

<sup>4</sup> The form motion apparently provided to Mr. Allen by the Department of Correction does not have a space for the defendant to include such information, nor does it indicate that the defendant needs to specifically identify any such periods of time; it simply says the defendant is requesting credit “for all local, county and state time served in conjunction with this charge.” (See Aug. p.1.)

ISSUE

Whether the district court erred by denying Mr. Allen's motion for credit for time served.

## ARGUMENT

### The District Court Erred By Denying Mr. Allen's Motion For Credit For Time Served

In addressing motions for credit for time served, the appellate court freely reviews “whether the district court properly applied the law governing credit for time served.” *State v. Brown*, 163 Idaho 941, 943 (Ct. App. 2018). However, the appellate court will defer to the trial court’s findings of fact unless they are clearly erroneous. *Id.*

Mindful of the district court’s factual finding that nothing in the evidence Mr. Allen submitted in support of his motion for credit for time served showed that the Department of Correction was miscalculating the time for which Mr. Allen is entitled to credit (Aug. p.9), Mr. Allen maintains the district court erred in denying his motion for credit.

## CONCLUSION

Mr. Allen respectfully requests this Court vacate the order denying his motion for credit for time served and remand this case for further proceedings.

DATED this 27<sup>th</sup> day of August, 2020.

/s/ Brian R. Dickson  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> day of August, 2020, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

BRD/eas