

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 47925-2020
 Plaintiff-Respondent,)
) Bonneville County Case No.
 v.) CR10-18-12236
)
 ZACHARY TYLER ALLEN,)
)
 Defendant-Appellant.)
)
)

BRIEF OF RESPONDENT

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

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Zachary Tyler Allen appeals from the district court's order denying his motion for credit for time served.

Statement Of The Facts And Course Of The Proceedings

Allen pled guilty to forgery. (See 47093 R., p.57.¹) The district court sentenced Allen to five years with one and a half year fixed, and retained jurisdiction. (47093 R., p.57.) The district court ordered that Allen be given credit for time served. (47093 R., p.58.) Allen requested he be relinquished from the retained jurisdiction prior to its completion. (See 47925 Ex., pp.1-7.) The district court granted Allen's request and relinquished jurisdiction. (47925 R., p.17.)

Thereafter, Allen filed a motion for credit for time served. (47925 R., pp.19-25.) In a written order, the district court noted that it granted Allen credit for time served at the time of sentencing. (47925 R., p.27.) "So, to the extent that Defendant is asking this Court to affirm that previous order," the district court granted Allen's motion and ordered that he be given credit for time served under both the court's and Idaho Department of Correction's (IDOC) jurisdiction. (47925 R., p.27.) The order further stated: "If Defendant believes that IDOC has incorrectly calculated or recorded the time that he has served, he needs to present evidence to support that belief. Without any evidence of that nature, this Court assumes that IDOC has correctly tracked the time Defendant has spent incarcerated." (47925 R., p.27.) Allen filed a timely notice of appeal. (47925 R., pp.29-32.)

¹ Consistent with the Appellant's brief, citations will include the applicable docket number. All citations to "47093 R." refer to the first volume of the record in that case.

Allen filed a second motion for credit for time served arguing that IDOC miscalculated his time, and attached IDOC's calculation. (Aug., pp.4-7.) Allen did not identify any errors or omissions in the document. The district court again stated that Allen needed to provide "information and evidence identifying the time in custody on this matter for which Defendant believes he is not receiving credit." (Aug., p.9.) Because it was "devoid of any evidence that IDOC has incorrectly recorded his time," the district court denied Allen's second motion for credit for time served. (Aug., p.9.)

ISSUE

Allen states the issue on appeal as:

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

(Appellant's brief, p.4.)

The state rephrases the issue as:

Has Allen failed to show that the district court erred when it denied his motion for credit for time served?

ARGUMENT

Allen Has Failed To Show That The District Court Erred When It Denied His Motion For Credit For Time Served

A. Introduction

“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,” Allen nonetheless asserts that the district court erred in denying his motion for credit for time served. (Appellant’s brief, p.5.) Because Allen challenges IDOC’s calculation of his credit, and not the district court’s, his claim should have been brought through a petition for writ of habeas corpus rather than through a motion for credit; the district court lacks jurisdiction to order IDOC to recalculate Allen’s sentence. Further, if this Court reviews the merits of his claim, the district court properly denied Allen’s motion for credit because it properly granted Allen credit for time served pursuant to Idaho Code § 18-309 and he provided no evidence that the calculation of his credit was incorrect.

B. Standard Of Review

“Questions of jurisdiction are questions of law over which this Court exercises free review.” State v. Martin, 159 Idaho 860, 863, 367 P.3d 255, 258 (Ct. App. 2016). This Court exercises free review over whether the district court properly applied the law governing credit for time served, and defers to the district court’s factual findings unless they are clearly erroneous. State v. Brown, 163 Idaho 941, 943, 422 P.3d 1147, 1149 (Ct. App. 2018).

C. The District Court Lacked Jurisdiction To Correct Alleged Error In IDOC's Calculations

Allen filed motions for credit for time served pursuant to Idaho Code § 18-309. (47925 R., p.19; Aug., p.1.) Pursuant to Idaho Criminal Rule 35(c), a court may correct its own computation of credit under that provision at any time. However, Allen's motions do not challenge the *court's* computation of his pre-judgment incarceration. Instead, Allen asserts that IDOC is miscalculating his credit. (See 47925 R., pp.23-25 (“Due to the IDOC's...illegally saying that I have not gotten credit for time served due to Bonneville County relinquishing jurisdiction.”); Aug., pp.4-5 (“IDOC [has] improperly calculated my time.”).)

A motion for credit is not the proper mechanism for challenging alleged error in *IDOC's* calculations. Instead, “a petition for writ of habeas corpus is an appropriate mechanism for challenging an alleged impropriety or error in the Department's computation of a prisoner's sentence.” Mickelsen v. Idaho State Corr. Inst., 131 Idaho 352, 355, 955 P.2d 1131, 1134 (Ct. App. 1998) (citing Bates v. Murphy, 118 Idaho 239, 243, 796 P.2d 116, 120 (1990); Calkins v. May, 97 Idaho 402, 545 P.2d 1008 (1976); State v. Vega, 113 Idaho 756, 758, 747 P.2d 778, 780 (Ct. App. 1987)). “Because [Allen]'s claims involve an alleged miscalculation by the IDOC...the appropriate remedy is for [Allen] to seek relief through a writ of habeas corpus.” Martin, 159 Idaho at 864-65, 367 P.3d at 259-60. The district court lacked jurisdiction to order IDOC to recalculate Allen's sentence. See id. at 865, 367 P.3d at 260.

D. If This Court Reaches The Merits, The District Court Did Not Err In Denying Allen's Motion Because He Failed To Show Any Error In The Credit He Was Granted

Even if the merits of Allen's motion for credit are considered, the district court still did not err by denying the motion. In accordance with Idaho Code § 18-309, the district court granted Allen credit for time served when he was sentenced. (See 47093 R., p.58.) The district

court affirmed Allen was granted credit for time served by granting his first motion for credit. (47925 R., p.27.) In its order, the district court invited Allen to present evidence to support his belief that his credit had been improperly calculated. (47925 R., p.27.) Allen filed a second motion and provided documentation of IDOC's calculation of his credit. (Aug., p.7.) However, Allen did not identify (and has not identified on appeal) any error in that calculation.

The IDOC document appears to accurately represent the sentence and pre-judgment credit in Allen's case. It accurately reflects that Allen was sentenced on April 29, 2019, to five years with one and a half year fixed following his conviction for forgery (see 47093 R., pp.57 (judgment of conviction)); that the district court retained jurisdiction for one year from the date of sentencing but that jurisdiction had been quashed (see 47925 R., p.17 (order relinquishing jurisdiction)); that Allen had fifteen days jail credit, (see 47093 R., pp. 10-13 and 20-24 (evidence that Allen was arrested on December 13, 2018, and released pre-trial on December 28, 2018, fifteen days later)); and that Allen will be parole eligible on October 14, 2020—one and half years from the date of sentencing, minus fifteen days of credit for time served—and his full term will expire on April 13, 2024—five years from the date of sentencing, minus the fifteen days of credit for time served (Aug., p.7). As the district court noted, his motion was “devoid of any evidence that IDOC has incorrectly recorded his time” and he failed to “succinctly and coherently present to the Court information and evidence identifying the time in custody on this matter for which Defendant believes he is not receiving credit.” (Aug., p.9.) Because Allen has presented no evidence that he has not received appropriate credit, the district court did not err when it denied his motion for credit for time served.

CONCLUSION

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

DATED this 15th day of September, 2020.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of September, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Kacey L. Jones
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KLJ/dd