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### State v. Cavallero Appellant's Brief Dckt. 47963

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

STATE OF IDAHO,	)	
	)	<b>NO. 47963-2020</b>
Plaintiff-Respondent,	)	
	)	<b>ADA COUNTY NO. CR-FE-2013-16900</b>
v.	)	
	)	
ANTHONY L. CAVALLERO,	)	<b>APPELLANT'S BRIEF</b>
	)	
Defendant-Appellant.	)	
<hr/>		

**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 DEBORAH A. BAIL**  
**District Judge**

**ERIC D. FREDERICKSEN**  
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I.S.B. #6555

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## STATEMENT OF THE CASE

### Nature of the Case

Anthony L. Cavallero contends the district court erred by denying his motion for credit for time served.

### Statement of the Facts and Course of Proceedings

In September 2013, the State charged Mr. Cavallero with two counts of battery on a correctional officer. (R., p.10.) Mr. Cavallero was arraigned on those charges on January 16, 2014, and bond was set at \$50,000; he was in custody at the time of his arraignment. (R., p.17.) Pursuant to an agreement with the State, Mr. Cavallero pleaded guilty to one of those counts, with the State dismissing the other. (R., p.69.) On July 28, 2014, the district court entered sentenced Mr. Cavallero to five years, with six months fixed. (R., p.77.) Mr. Cavallero is currently serving his sentence, which has a “sentence satisfaction date” of September 30, 2021.<sup>1</sup>

In February 2020, Mr. Cavallero filed a *pro se* motion for credit for time served. (R. p.81.) He additionally filed an affidavit stating that his trial counsel had informed him he would receive credit for the time he served while in prison, from the time of the crime through the time of his sentencing. (R., p.84.) On March 26, 2020, the district court entered its “Order Denying Defendant’s Request For Credit For Time Served.” (R., p.87.) The district court provided no explanation for its decision. (R., p.87.)

Mr. Cavallero filed a timely Notice of Appeal. (R., p.89.)

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<sup>1</sup> See [https://www.idoc.idaho.gov/content/prisons/offender\\_search/detail/87463](https://www.idoc.idaho.gov/content/prisons/offender_search/detail/87463) (last visited October 4, 2020).

ISSUE

Did the district court err when it denied Mr. Cavallero's motion for credit for time served?

## ARGUMENT

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

“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. Taylor*, 160 Idaho 381, 386 (2016).

Mindful of the requirement that, to receive pre-judgment credit for time served, a defendant must show that “the incarceration is attributable to the offense” for which judgment was entered, *see State v. Taylor*, 160 Idaho 381, 386 (2016), and that such proof is not included within his motion for credit for time served (*see R.*, pp.81-86), Mr. Cavallero maintains the district court erred by denying his motion for credit for time served.

## CONCLUSION

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

DATED this 5<sup>th</sup> day of October, 2020.

/s/ Kimberly A. Coster  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5<sup>th</sup> day of October, 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

KAC/eas