

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
) **No. 47963-2020**
)
) **Plaintiff-Respondent,**)
) **Ada County Case No.**
) **CR-FE-2013-16900**
)
) **v.**)
)
) **ANTHONY LAWRENCE CAVALLERO,**)
)
) **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 DEBORAH A. BAIL
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Anthony Lawrence Cavallero appeals from the district court's denial of his motion for credit for time served.

Statement Of The Facts And Course Of The Proceedings

The state charged Cavallero with two counts of felony battery on a correctional officer. (R., pp.49-50.) Pursuant to a plea agreement, Cavallero pleaded guilty to one count and the state dismissed the remaining count. (See R., pp.64, 69.) The district court sentenced Cavallero to five years, with six months fixed, to run consecutive to the sentence Cavallero was then serving. (R., pp.77-78.)

Cavallero filed a pro se motion for credit for time served, requesting credit for the time he was incarcerated between his commission of the crime and his sentencing. (R., pp.81-85.) The district court denied the motion. (R., p.87.) Cavallero filed a timely notice of appeal. (R., pp.89-92.)

ISSUE

Cavallero states the issue on appeal as:

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

(Appellant's brief, p.2.)

The state rephrases the issue as:

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

ARGUMENT

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

A. Introduction

“Mindful” that a defendant is entitled to pre-judgment credit only for incarceration attributable to the offense for which judgment was entered, and that “such proof is not included within his motion for credit time served,” Cavallero nonetheless argues that the district court erred when it denied his motion for credit for time served. (Appellant's brief, p.3.) Because Cavallero has not shown that his pre-judgment incarceration was attributable to the offense for which judgment was entered in this case, the district court did not err when it denied his motion for credit for time served.

B. Standard Of Review

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. Cavallero Has Failed To Show That The District Court Erred When It Denied His Motion

A criminal defendant is entitled to receive credit for time served prior to the entry of judgment “if such incarceration was for the offense or an included offense for which the judgment was entered.” I.C. § 18-309(1).

Cavallero committed the underlying offense while he was incarcerated on a different case. (See PSI, p.3.) His incarceration on that case continued through the time of his sentencing in this case. (See PSI, p.9; R., p.78.) Cavallero is not entitled to credit in this case for pre-judgment

time served that is attributable only to his prior, unrelated case and not also to his battery on a correctional officer in this case. See State v. Hogan, 162 Idaho 524, 525, 399 P.3d 851, 852 (Ct. App. 2017). As Cavallero concedes, his motion for credit for time served provided no proof that his pre-judgment incarceration was also attributable to his offense in this case. (See Appellant's brief, p.3; see also R., pp.81-85.) Therefore, the district court did not err when it denied his motion for credit for time served.

CONCLUSION

The state respectfully requests this Court to affirm the district court's denial of Cavallero's motion for credit for time served.

DATED this 28th day of October, 2020.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 28th day of October, 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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