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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48055-2020
Plaintiff-Respondent,)	
)	WASHINGTON COUNTY
)	NO. CR-2015-6957
v.)	
)	
LEVI HUGH EDMISTON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF WASHINGTON**

**HONORABLE SUSAN E. WIEBE
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Levi Hugh Edmiston contends the district court erred by denying, in part, his request for credit for time served. He claims that in addition to the time credited by the district court, he is entitled to credit for time he served in the Canyon County Jail, prior to the complaint being filed and the original arrest warrant being served on him, plus the time he served in the Payette County Jail, between the issuance and service of a later bench warrant.

Statement of the Facts and Course of Proceedings

On October 29, 2015, the State filed a Criminal Complaint in this case (“Washington County Case”) charging Mr. Edmiston with burglary and multiple counts of theft, which the State alleged Mr. Edmiston committed on June 9, 2015. (R., pp.25-29.) Also on October 29, 2015, the magistrate found probable cause, issued a warrant for Mr. Edmiston’s arrest (“Washington County Warrant”), and the warrant was served upon Mr. Edmiston. (R., pp.25-29, 31.) At the time, Mr. Edmiston was in the Canyon County Jail,¹ and the Washington County Warrant was served upon him at that jail. (R., pp.32, 33.)

Mr. Edmiston remained in custody and was later transported to the Washington County Courthouse, where he was bound over on the felony charges in this Washington County Case; he subsequently pled guilty, and he was sentenced to a term of imprisonment with retained jurisdiction. (R., pp.41-72, 80.) On November 10, 2016, following Mr. Edmiston’s successful rider, the district court entered an Order releasing him to probation. (R., pp.78-82.)

¹ The Canyon County Sheriff’s Office arrest report indicates Mr. Edmiston was booked into the Canyon County Jail on August 15, 2015, which is after the offenses in this case were alleged to have been committed. (R., p.162.)

Approximately six weeks later, on December 27, 2016, Mr. Edmiston was arrested by Fruitland Police and booked into the Payette County Jail on charges of trespassing and possessing methamphetamine, and on a warrant from Malheur County, Oregon. (R., pp.98-117.) Consequently, on January 12, 2017, Mr. Edmiston missed his probation review hearing in this Washington County case, and the district court immediately issued a bench warrant for failure to appear. (R., p.93.) The bench warrant was served on Mr. Edmiston on May 17, 2017,² when he was released from the Payette County Jail to the custody of the Washington County Sheriff. (R., pp.118-22.) Mr. Edmiston did not post bond and remained in custody in Washington County throughout his subsequent probation revocation proceedings, which ultimately concluded with an order issued June 19, 2017, revoking his probation and remanding him to the custody of the Department of Correction. (R., pp.125-129.)

On December 4, 2018, Mr. Edmiston filed a pro se motion for credit for time served pursuant to Idaho Criminal Rule 35(c). (R., pp.157-71.) Mr. Edmiston claimed he was not properly credited for time he had served in custody prior to his arrival at the Department of Correction; specifically, the periods he had spent in the various county jails and while on retained jurisdiction. (R., p.159.) The district court issued an order granting Mr. Edmiston's motion, in substantial part, and determined Mr. Edmiston was entitled to 402 days of credit for time served. (R., p.172.) On March 24, 2020, Mr. Edmiston filed another motion for credit for time served, renewing his request to be properly credited for all local, county and state time as required by I.C. § 18-309. (R., p.174.)

² The Payette County Jail Report indicates there had been a "hold" for the warrant that was "resolved" on May 17, 2017 (R., p.169). However, there appears to be no documentation in the record showing the date the hold had placed. (*See generally*, R.)

The district court issued an Amended Order on April 16, 2020. (R., p.176.) Based on correct arrest dates, the court recalculated Mr. Edmiston's time served in this case to be 413 days, as follows:

- 10/29/15 – 11/10/16: 379 days (the period starting with the service of the Washington County Warrant, and ending with the order releasing Mr. Edmiston to probation)
- 05/17/17 – 06/19/17: 34 days (the period starting with the service of the bench warrants, and ending with the order revoking Mr. Edmiston's probation and remanding him to the custody of the Department of Correction.)

(R., p.176.)

The court gave no credit for any of the 74 days Mr. Edmiston spent in the Canyon County Jail prior to the service of the warrant on October 29, 2015, or for the 125-day period he spent in the Payette County Jail, between the issuance of the bench warrant on January 12, 2017, and its service on May 17, 2017.

Mr. Edmiston timely appealed from the Amended Order. (R., p.178.)

ISSUE

Did the district court err when it denied part of Mr. Edmiston's request for credit for time served?

ARGUMENT

The District Court Erred When It Denied Part Of Mr. Edmiston's Request For Credit For Time Served

A. Introduction

Mr. Edmiston contends the district court erred by declining credit for two specific periods of time: a 74-day period he spent in the Canyon County Jail, prior to the filing of the criminal complaint on October 29, 2015, and contemporaneous service of the arrest warrant; and (2) a 125-day period he spent in the Payette County Jail, between the January 12, 2017 issuance of the subsequent bench warrant and its service on May 17, 2017. Mindful that the record lacks the requisite documentation to support his claims and demonstrate clear error by the district court, Mr. Edmiston asks this Court to conclude he is entitled to the requested credit for time served.

B. Standard Of Review

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). On review of a trial court’s order granting or denying credit for time served, the appellate court exercises free review over whether the trial court properly applied the law governing credit for time served, and defers to the trial 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 Erred By Denying Mr. Edmiston Credit For Time Served

In order 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). Mindful of this requirement, and that the record in this case contains

no documentation of an arrest or hold at the Canyon County Jail, prior *to* October 29, 2015, attributable to this Washington County Case, Mr. Edmiston maintains that the district court erred by denying him credit for the 74 days he served in the Canyon County Jail prior to October 29, 2015.

Additionally, Mr. Edmiston claims he is entitled to credit for the 125 days he served in the Payette County Jail, between the January 12, 2017 issuance of the Washington County bench warrant, and the service of that warrant on May 17, 2017. (*See R.*, pp.125-29.) He points to the Payette County Jail Booking Report which shows there was a “hold” placed for the Washington County bench warrant in this case, and that the hold was “resolved” on May 17, 2017. (*R.*, p.169.) He submits that the “hold” was likely placed on a date prior to May 17, and possibly on January 12, though he acknowledges there is no proof in the record to establish a date. (*See generally R.*). Mindful that a district court’s findings will be affirmed absent showing of clear error, and that without the documentation he cannot carry his appellate burden, Mr. Edmiston maintains that the district court also erred in denying him credit for this 125-day period.

CONCLUSION

Mr. Edmiston respectfully asks this Court to remand his case with instructions that the district court award him additional credit for time served, specifically, the 74-day period between August 16, 2015 and October 29, 2015, and the 125-day period between January 17, 2017 and May 17, 2017.

DATED this 11th day of January, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of January, 2021, 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

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

KAC/eas