

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

3-5-2021

### State v. Christiansen Respondent's Brief Dckt. 48181

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Christiansen Respondent's Brief Dckt. 48181" (2021). *Not Reported*. 7001.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/7001](https://digitalcommons.law.uidaho.edu/not_reported/7001)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

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

STATE OF IDAHO, )  
 ) No. 48181-2020  
 Plaintiff-Respondent, )  
 ) Bonneville County Case No.  
 v. ) CR10-19-1960  
 )  
 DWAYNE CHARLES CHRISTIANSEN, )  
 )  
 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**

\_\_\_\_\_  
**HONORABLE DANE H. WATKINS, JR.**  
**District Judge**  
\_\_\_\_\_

**LAWRENCE G. WASDEN**  
**Attorney General**  
**State of Idaho**

**COLLEEN D. ZAHN**  
**Deputy Attorney General**  
**Chief, Criminal Law Division**

**KENNETH K. JORGENSEN**  
**Deputy Attorney General**  
**Criminal Law Division**  
**P. O. Box 83720**  
**Boise, Idaho 83720-0010**  
**(208) 334-4534**  
**E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)**

**ATTORNEYS FOR**  
**PLAINTIFF-RESPONDENT**

**ANDREA W. REYNOLDS**  
**Deputy State Appellate Public Defender**  
**322 E. Front St., Ste. 570**  
**Boise, Idaho 83702**  
**(208) 334-2712**  
**E-mail: [documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)**

**ATTORNEY FOR**  
**DEFENDANT-APPELLANT**

# TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUE .....	2
ARGUMENT .....	3
Christiansen Has Failed To Show That The District Court Erred When It Denied His Motion For Credit For Time Served On Charges From A Different Case .....	3
A.    Introduction.....	3
B.    Standard Of Review .....	3
C.    Christiansen Is Not Entitled To Credit For Time Served On Charges Other Than The Offense For Which The Judgment Was Entered In This Case .....	3
D.    Christiansen Has Shown No Abuse Of Discretion In Denying A Reduction Of Sentence .....	4
CONCLUSION.....	6
CERTIFICATE OF SERVICE .....	7

**TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PAGE</u></b>
<u>Bach v. Bagley</u> , 148 Idaho 784, 229 P.3d 1146 (2010) .....	5
<u>Primera Beef, LLC v. Ward</u> , 166 Idaho 180, 457 P.3d 161 (2020) .....	5
<u>State v. Brand</u> , 162 Idaho 189, 395 P.3d 809 (2017) .....	4
<u>State v. Covert</u> , 143 Idaho 169, 139 P.3d 771 (Ct. App. 2006) .....	3
<u>State v. Gonzalez</u> , 165 Idaho 95, 439 P.3d 1267 (2019) .....	4
<u>State v. Huffman</u> , 144 Idaho 201, 159 P.3d 838 (2007) .....	5
<u>State v. Moore</u> , 156 Idaho 17, 319 P.3d 501 (Ct. App. 2014) .....	5
<u>State v. Owens</u> , 158 Idaho 1, 343 P.3d 30 (2015) .....	4
<u>State v. Smith</u> , 161 Idaho 162, 384 P.3d 409 (Ct. App. 2016) .....	5
 <b><u>STATUTES</u></b>	
I.C. § 18-309(1).....	3
I.C. § 37-2732B(a)(4)(A) .....	4

## STATEMENT OF THE CASE

### Nature Of The Case

Dwayne Charles Christiansen appeals from the denial of his motion for credit for time served.

### Statement Of The Facts And Course Of The Proceedings

The district court entered judgment on Christiansen's conviction for trafficking in methamphetamine and sentenced him to ten years with three and one-half years determinate. (R., vol. 2, pp. 4-5 (citing the page numbers of the electronic file).) The district court awarded credit for time served. (R., vol. 2, p. 5.)

Christiansen filed a motion under Rule 35 "seeking credit of 224 days" served in a different case or, alternatively, "120 days from" a third case. (R., vol. 2, pp. 9-12.) Christiansen argued it "seems unduly harsh" and is a "pretty severe consequence" that he not get credit for the time served in the first of those cases, which was "ultimately dismissed." (R., vol. 2, p. 11.) The alternative request for 120 days for time served in a different case was requested "for similar reasons." (Id.)

The district court denied the motion. (R., vol. 2, p. 25.) Christiansen filed a notice of appeal timely from the denial of his Rule 35 motion. (R., vol. 2, pp. 28-30.)

ISSUE

Christiansen states the issue on appeal as:

Did the district court abuse its discretion when it denied Mr. Christiansen's motion for credit for time served?

(Appellant's brief, p. 3.)

The state rephrases the issue as:

Has Christiansen failed to show that the district court erred when it denied his motion for credit for time served on charges from a different case?

## ARGUMENT

### Christiansen Has Failed To Show That The District Court Erred When It Denied His Motion For Credit For Time Served On Charges From A Different Case

#### A. Introduction

Christiansen moved in this case for credit for time served on charges brought in different cases on the theory that it would be unjust if he did not receive credit for dismissed charges. (R., vol. 2, p. 11.) The district court denied the motion. (R., vol. 2, p. 25.)

On appeal Christiansen “recognizes the district court did not err as a matter of law” but nevertheless contends “that the district court abused its discretion considering the equities in this case.” (Appellant’s brief, pp. 4-5.) Because his argument is contrary to controlling authority, Christiansen has failed to show error.

#### B. Standard Of Review

“Whether the district court properly applied the law governing credit for time served is a question of law over which we exercise free review.” State v. Covert, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006). “We defer to the trial court’s findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous.” Id.

#### C. Christiansen Is Not Entitled To Credit For Time Served On Charges Other Than The Offense For Which The Judgment Was Entered In This Case

A defendant is entitled to credit for time served “for any period of incarceration prior to 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). The test for whether a defendant is entitled to credit is whether he was (1) “incarcerated during the intervening period from

when the arrest warrant was served and the judgment of conviction was entered” and (2) “putting aside any alternative reason for the defendant’s incarceration, the relevant offense must be one that provides a basis for the defendant’s incarceration.” State v. Brand, 162 Idaho 189, 192-93, 395 P.3d 809, 812-13 (2017). This second prong of this test “lays aside any alternative reason for the defendant’s incarceration and simply requires that the relevant offense be one that provides a basis for incarceration.” State v. Gonzalez, 165 Idaho 95, 99, 439 P.3d 1267, 1271 (2019). The defendant is entitled to credit only if his “prejudgment jail time was for ‘the offense’ the defendant was convicted of and sentenced for.” State v. Owens, 158 Idaho 1, 4, 343 P.3d 30, 33 (2015).

Here Christiansen sought credit for time he was in jail on charges other than the offense for which he was convicted and sentenced in this case. (R., vol. 2, pp. 9-12.) The applicable legal standards, as Christiansen recognizes, do not entitled him to credit for time served. He has therefore failed to show error in the denial of his motion for credit for time served.

D. Christiansen Has Shown No Abuse Of Discretion In Denying A Reduction Of Sentence

Christiansen, recognizing that the district court committed no legal error, contends the district court should have granted credit for time served as an equitable matter. (Appellant’s brief, pp. 4-5.<sup>1</sup>) He cites no authority for the proposition that an Idaho court

---

<sup>1</sup> The state notes that Christiansen’s request for 224 days of time served would have reduced the determinate portion of the sentence below the mandatory minimum period of three years, I.C. § 37-2732B(a)(4)(A), a reduction beyond the district court’s discretion. In an exercise of discretion the district court could at most have reduced the three and one-half years determinate portion of the sentence to the three years mandatory minimum, a reduction of 182 days.

may, on equitable grounds, disregard the statutory framework for calculating the service of a sentence. (Id.) This Court “will not consider an issue not supported by argument and authority in the opening brief.” Bach v. Bagley, 148 Idaho 784, 790, 229 P.3d 1146, 1152 (2010) (quotation marks omitted). If an argument is not supported by authority, “it is deemed to be waived.” Primera Beef, LLC v. Ward, 166 Idaho 180, \_\_\_, 457 P.3d 161, 165 (2020). Because Christiansen offers no authority for his argument that a court may disregard statutes when it deems their application inequitable, he has failed to present an argument that can be considered by this Court.

To the extent his argument is considered, it is without merit. “[A] district court may only give credit for the correct amount of time actually served by the defendant prior to imposition of judgment in the case; the district court does not have discretion to award credit for time served that is either more or less than that.” State v. Moore, 156 Idaho 17, 21, 319 P.3d 501, 505 (Ct. App. 2014). The district court did not have discretion to ignore the statute.

Finally, if considered as a general request to reduce the sentence,<sup>2</sup> again there is no error. “In presenting a Rule 35 motion, a defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion.” State v. Smith, 161 Idaho 162, 164, 384 P.3d 409, 411 (Ct. App. 2016) (citing State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)). That Christiansen had been incarcerated on the other two cases was known to the district court at sentencing, and in fact considered, in imposing a determinate portion six months

---

<sup>2</sup> The state is not, by making this argument, conceding that this issue was presented to the district court or properly raised to this Court. The state is merely addressing the only *legal* grounds on which the district court could have reduced the sentence.

above the mandatory minimum. (6/22/20 Tr., p. 34, L. 3 – p. 37, L. 11.) It was not new information and did not show the sentence to be excessive.

Idaho's statutes provide the method of calculating credit for time served. Application of that statutory framework, as Christiansen concedes, shows he is not entitled to credit for time served in a difference case. Christiansen has failed to present a viable argument, one that may be considered by this Court, that the district court had equitable power to disregard the statutory framework for calculating time served. Finally, even though the issue was not presented to the district court or to this Court as a general request to reduce the sentence, if considered that argument fails too. Christiansen has shown no error.

#### CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying the Rule 35 motion for credit for time served.

DATED this 5th day of March, 2021.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of March, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

ANDREA W. REYNOLDS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd