

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

1-8-2021

State v. Frakes Appellant's Brief Dckt. 48287

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Frakes Appellant's Brief Dckt. 48287" (2021). *Not Reported*. 7062.
https://digitalcommons.law.uidaho.edu/not_reported/7062

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.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48287-2020
Plaintiff-Respondent,)	
)	CANYON COUNTY NO. CR-2017-4351
v.)	
)	
ELEASAR PEDROSA FRAKES,)	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 CANYON**

HONORABLE THOMAS W. WHITNEY
District Judge

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

JENNY C. SWINFORD
Deputy State Appellate Public Defender
I.S.B. #9263
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

**ATTORNEYS FOR
DEFENDANT-APPELLANT**

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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 Proceedings	1
ISSUE PRESENTED ON APPEAL	5
ARGUMENT	6
The District Court Erred When It Denied Mr. Frakes’s Motion For Credit For Time Served	6
A. Introduction	6
B. Standard Of Review.....	6
C. The Facts Of This Case Support An Order Of Credit For Time Served To Mr. Frakes For His Time In Custody When He Should Have Been Served The Outstanding January 2018 Bench Warrant, But The Ada County Sheriff’s Office Failed To Do So	6
CONCLUSION.....	9
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

Cases

State v. Barrett, 163 Idaho 443 (2018).....6, 7, 8

State v. Bitkoff, 157 Idaho 410 (Ct. App. 2014)7

State v. Brand, 162 Idaho 189 (2017)8

State v. Owens, 158 Idaho 1 (2015)8

State v. Taylor, 160 Idaho 381 (2016).....6

Statutes

I.C. § 18-309.....8

I.C. § 19-26036, 7, 8

I.C. § 20-2276

STATEMENT OF THE CASE

Nature of the Case

Eleasar Frakes appeals from the district court's order denying his motion for credit for time served. Mr. Frakes moved for credit for his time in custody when he should have been served a bench warrant by the Ada County Sheriff's Office, but the Ada County Sheriff's Office chose not to. Instead, the Ada County Sheriff's Office waited over one and one-half years, until Mr. Frakes was placed on probation in a different case, to serve the outstanding warrant. In denying Mr. Frakes's motion, the district court stated it would have ordered credit for that time if it had "the discretion to make things more fair." Although Mr. Frakes is mindful that the statute on credit for time served requires service of the warrant, he submits that the facts of this case support an order of credit for his time in custody when he should have been served with the warrant.

Statement of Facts and Course of Proceedings

In May 2017, Mr. Frakes pled guilty to possession of a controlled substance. (R., pp.29–31.) In July 2017, the district court sentenced him to five years, with two years fixed, but suspended execution of the sentence and placed him on probation for three years. (R., pp.56–58.)

Less than two months later, on September 7, 2017, the State petitioned for a probation violation. (R., pp.65–66.) The district court issued a bench warrant, and it was served on Mr. Frakes on September 29, 2017. (R., pp.74–77.) Mr. Frakes was in custody until October 13, 2017, when he was released on his own recognizance. (R., p.82.) In December 2017, Mr. Frakes admitted to violating his probation. (R., p.83.)

On January 29, 2018, Mr. Frakes failed to appear at the probation violation disposition hearing, and the district court issued another bench warrant (“the January 2018 warrant”). (R., pp.86, 87–88.)

Over one and one-half years later, on July 23, 2019, the district court entered an order to transport Mr. Frakes from a prison facility to the custody of the Canyon County Sheriff’s Office for the pending disposition hearing. (R., p.89.) At the hearing, held in August 2019, Mr. Frakes was not present because he had been transferred to another prison facility for a period of retained jurisdiction in a different case out of Ada County. (R., p.91.) About a month later, in September 2019, the district court held a status hearing, with Mr. Frakes present telephonically, and set another hearing for disposition. (R., p.94.)

In October 2019, Mr. Frakes filed a written consent to a telephonic appearance for the upcoming disposition hearing. (R., pp.95–96.) In this consent form, Mr. Frakes stated that he had never been served with the January 2018 warrant. (R., p.95.) Mr. Frakes explained that he was arrested back on July 21, 2018, for the Ada County case and had remained incarcerated since then. (R., pp.95–96.) He stated that he was currently participating in the retained jurisdiction program for the Ada County case and, as such, the prison would not allow his transport for the disposition hearing. (R., pp.95–96.) He consented to a telephonic hearing on the disposition. (R., p.96.) The district court held a hearing on November 6, 2019, but neither Mr. Frakes nor his counsel was present in person or telephonically. (R., p.100.)

About three months later, on February 4, 2020, the January 2018 warrant was re-filed with a return of service for February 3, 2020. (R., pp.101–02.) On February 12, 2020, the district court held the disposition hearing and reinstated Mr. Frakes on probation. (R., pp.104–05, 106–07.) The district court ordered the sentence to run concurrently with the sentence in the Ada

County case. (R., p.106.) The district court gave Mr. Frakes ninety-four days of credit for time served. (R., p.106.) This included eighty-four days of prejudgment incarceration before the issuance of the January 2018 warrant and ten days from the service of the warrant to disposition (February 3 to February 12, 2020). (R., p.123.)

In August 2020, Mr. Frakes filed a motion for credit for time served. (R., pp.122–24.) He argued that he was entitled to credit for time served starting from when the Ada County Sheriff’s Office should have served the January 2018 bench warrant on him, but chose not to. (R., pp.123–24.) He explained that he was arrested on the Ada County case on July 21, 2018, and the Ada County Sheriff’s Office should have served the warrant on him the next day, July 22. (R., pp.123–24.) Instead, the Ada County Sheriff’s Office waited 561 days and did not serve the warrant on him until he completed his period of retained jurisdiction in the Ada County case and was placed on probation. (R., p.123.) He contended that the Ada County Sheriff’s Office knew about the January 2018 bench warrant, yet “willful[ly] fail[ed]” to serve it. (R., p.124.) He argued this was “unjust.” (R., p.123.) Thus, he moved for the district court to order an additional 561 days of credit for time served (from July 22, 2018, to February 3, 2020), for a total of 665 days (561 days plus 94 days). (R., p.124.)

The district court held a hearing on the motion. (R., p.127.) Mr. Frakes again argued that he was entitled to credit for time served from when the Ada County Sheriff’s Office should have served the January 2018 warrant on him. (Tr., p.16, L.24–p.19, L.18.) He stated:

He sat there for months and months. The Ada County jail didn’t serve the warrant upon him. There’s nothing to indicate they couldn’t have. And we’re not talking about a far flung place where it might be difficult to discover. We’re talking about one county over, and these types of warrants are issued and served all the time.

(Tr., p.17, Ls.16–22.) The State did not dispute Mr. Frakes’s assertion that the Ada County Sheriff’s Office knowingly did not serve the January 2018 bench warrant. (Tr., p.19, L.21–p.20,

L.6.) Rather, the State submitted:

Judge, you know, I don’t really have much of an argument on this. I saw the motion, and I don’t think there’s any case law that I’m aware of that directly addresses this sort of situation.

And, frankly, I’m going to submit it to the wisdom of the court. You know, I don’t feel like I have a huge dog in this fight. And I’m going to just submit to your wisdom and knowledge about how this has happened before because I don’t have any experience on it myself. So, I’ll just submit on that, Judge, unless you have specific questions.

(Tr., p.19, L.21–p.20, L.6.) The district court confirmed with Mr. Frakes that his position was “more of a fairness argument.” (Tr., p.20, Ls.13–15.) Then, the district court denied the motion.

The district court explained:

[I]t’s denied because I don’t think I have the authority to give him that credit in this case because the warrant was not, in fact, served. I can’t make the Ada County Sheriff’s Office serve the warrant on him. You know, even if you had filed a motion right away saying, hey, he’s not getting credit over here, I just don’t believe I have the authority to make them do that. . . . You have a good argument, . . . but I just don’t think I have the authority under Rule 35(c) to do what you’re asking. So for that reason the motion is denied.

(Tr., p.21, Ls.1–13.) The district court also stated, “[I]f I had the discretion to make things more fair, I would do that. It’s just under the mechanisms that we have in this particular case I don’t have that.” (Tr., p.22, Ls.17–18.)

Shortly after the hearing, the district court entered an order denying Mr. Frakes’s motion for credit for time served the reasons stated on the record at the hearing. (R., p.128.) Mr. Frakes timely appealed. (R., pp.130–32.)

ISSUE

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

ARGUMENT

The District Court Erred When It Denied Mr. Frakes's Motion For Credit For Time Served

A. Introduction

Mr. Frakes argues that he is entitled to credit for time served for his period of incarceration when the Ada County Sheriff's Office should have, but chose not to, serve the outstanding January 2018 warrant. Although Mr. Frakes is mindful of the relevant statute's requirement of service of the warrant, he submits that the facts of this case support of an order of credit for his time in custody when he should have been served the warrant.

B. Standard Of Review

"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. Barrett*, 163 Idaho 449, 451 (2018) (quoting *State v. Taylor*, 160 Idaho 381, 384–85 (2016)).

C. The Facts Of This Case Support An Order Of Credit For Time Served To Mr. Frakes For His Time In Custody When He Should Have Been Served The Outstanding January 2018 Bench Warrant, But The Ada County Sheriff's Office Failed To Do So

Idaho Code § 19-2603 governs credit for time served upon revocation of probation. It states in relevant part:

The defendant shall receive credit for time served *from the date of service of a bench warrant* issued by the court after a finding of probable cause to believe the defendant has violated a condition of probation, for any time served following an arrest of the defendant pursuant to [I.C. § 20-227¹], and for any time served as a condition of probation under the withheld judgment or suspended sentence.

¹ I.C. § 20-227 governs the arrest of a probationer with an agent's warrant.

I.C. § 19-2603 (emphasis added). “Under the plain terms of I.C. § 19-2603, a defendant is entitled to credit for time served from service of a bench warrant for a probation violation.” *State v. Bitkoff*, 157 Idaho 410, 413 (Ct. App. 2014).

Although Mr. Frakes acknowledges that he was not served with the bench warrant until February 3, 2020, he nonetheless requests credit for his time in custody after his arrest in the Ada County case in July 2018. As asserted by his counsel below, and undisputed by the State, the only reason that Mr. Frakes did not receive credit for this time was due to Ada County Sheriff’s Office “willful failure” to serve the outstanding January 2018 bench warrant. (R., p.124; *see* Tr., p.19, L.21–p.20, L.6 (State’s position).) His counsel argued:

It was indisputably unjust for the Ada County Sheriff to choose not to serve the January . . . 2018 Bench Warrant issued in this matter upon Defendant once he came into the Sheriff’s custody on July 21, 2018. Additionally, it is impossible to argue that the Ada County Sheriff did not [k]now about the Bench Warrant nor that they could have discovered the existence of the Bench Warrant. Reasonably speaking, they could have—and should have—served the Bench Warrant in this matter upon [Mr. Frakes] on July 22, 2018.

(R., pp.123–24.) Instead, the Ada County Sheriff’s Office waited to serve the bench warrant until Mr. Frakes was placed on probation in the Ada County case—561 days after his arrest. (R., pp.123–24.) Thus, despite the initial lack of service, Mr. Frakes argues, as he did below, that he is entitled to credit for this time as a matter of fairness. (R., pp.123–24; Tr., p.16, L.24–p.19, L.18, p.20, Ls.7–23.)

To this end, as a matter of fairness, Mr. Frakes submits that law enforcement’s failure to serve an outstanding warrant to avoid the accrual of credit contravenes the purpose of the credit for time served statutes. Chief Justice Burdick, in dissent in *State v. Barrett*, 163 Idaho 443 (2018), emphasized this concern upon the majority’s holding that a “Hold Notice Request” was not a legal basis of incarceration and therefore the defendant was not entitled to credit for that

time in custody upon its service. *Id.* at 452–54 (majority opinion); *id.* at 454–55 (Burdick, C.J., concurring in part and dissenting in part). Chief Justice Burdick explained:

[T]he use of the Hold Notice Request to deprive a defendant of credit for time served fails to abide by the spirit of [I.C. §] 18-309.² The approach condoned by the majority would allow the State to systemically deprive defendants of credit for time served when incarcerated for multiple offenses—the exact issue this Court sought to remedy through our holdings in *Owens*³ and *Brand*.⁴ Under the majority’s approach, the State is allowed to serve a Hold Notice Request on an incarcerated defendant, subsequently wait for the defendant’s initial appearance on the new charges—in this case, a time period of forty-seven days—and then serve the arrest warrant. This process functions to deprive the defendant of credit for time served from the date the Hold Notice Request is issued until the date of the initial appearance. I believe [I.C. §] 18-309, *Owens*, and *Brand* foreclose any argument this procedure should be allowed.

Id. at 455 (Burdick, C.J., concurring in part and dissenting in part). Although Chief Justice Burdick was discussing the credit for time served statute for prejudgment incarceration, the same “process” to “deprive the defendant of credit” has come to fruition here in a post-judgment case. *Id.* Law enforcement was able to wait to serve the outstanding warrant on Mr. Frakes until the day of his release from custody in another case, thus depriving him of 561 days of credit for time served. Thus, while Mr. Frakes acknowledges that I.C. § 19-2603’s plain language does not mandate credit for time served, he nonetheless asserts that he is entitled to credit “to abide by the spirit” of the statute. *Id.*

² This statute governs credit for time served for prejudgment incarceration.

³ *State v. Owens* held that a defendant is entitled to credit for time served on each offense, even if the sentences are to be served consecutively. 158 Idaho 1, 4–5 (2015).

⁴ *State v. Brand* held that a defendant is entitled to credit for time served on each offense that provides a basis for the defendant’s incarceration, even if the defendant is already incarcerated on unrelated charges. 162 Idaho 189, 192–93 (2017).

CONCLUSION

Mr. Frakes respectfully requests that this Court reverse the district court's order denying his motion for credit for time served and remand this case with instructions to the district court to enter an order giving Mr. Frakes 665 days of credit for time served. Alternatively, he respectfully requests that this Court vacate the district court's order denying his motion for credit for time served and remand this case for further proceedings.

DATED this 8th day of January, 2021.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th 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

JCS/eas