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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 48287-2020
 Plaintiff-Respondent,)
) Canyon County Case No.
 v.) CR-2017-4351
)
 ELEASAR PEDROSA FRAKES,)
)
 Defendant-Appellant.)
)
)

BRIEF OF RESPONDENT

**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**

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STATEMENT OF THE CASE

Nature Of The Case

Eleasar Pedrosa Frakes appeals from the district court's denial of his Rule 35 motion seeking credit for time served.

Statement Of The Facts And Course Of The Proceedings

In May 2017, Frakes pleaded guilty to possession of methamphetamine. (R., pp.25-26, 29-31.) The Canyon County district court sentenced Frakes to five years, with two years fixed, and placed him on probation. (R., pp.56-57.)

On September 7, 2017, the state filed a petition for probation violation, alleging Frakes violated the terms and conditions of his probation in a variety of ways. (R., pp.65-70.) Frakes admitted to violating his probation and the court set a disposition hearing on January 8, 2018. (R., p.83.) After the disposition hearing was continued to January 29, 2018, Frakes failed to appear. (R., pp.84-86.) The court issued a bench warrant for his arrest. (R., p.87.)

On July 21, 2018, Frakes was arrested for committing a new crime in Ada County, where he stayed, incarcerated, until May 6, 2019. (R., pp.95-96.) On May 6, Frakes was sentenced in the Ada County case and the court retained jurisdiction. (R., p.96.)

Following the period of retained jurisdiction, on February 3, 2020, the Ada County court placed Frakes on probation. (See R., p.123.) That same day, the bench warrant in this case, which had previously issued on January 29, 2019, was served on Frakes. (R., p.102.)

On February 12, 2020, the district court in this case reinstated Frakes on probation, granting 94 days of credit for the "84 days served prior to January 29, 2018 and 10 days served from February 3, 2020 to February 12, 2020." (R., pp.106-07, 123.)

Frakes subsequently filed a Rule 35 motion for credit for time served. (R., pp.109-12, 122-25.) In it, he sought additional credit for the 561 days he was incarcerated in Ada County after the bench warrant issued, but *before* it was served:

It was indisputably unjust for the Ada County Sheriff to choose not to serve the January 29, 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 know about the Bench Warrant nor that they could not have discovered the existence of the Bench Warrant. Reasonably speaking, they could have—and should have—served the Bench Warrant in this matter upon Defendant on July 22, 2018.

(R., p.111.)

The district court denied Frakes's motion after concluding that it could not grant credit for time predating the service of the bench warrant:

[F]irst of all, let me say the motion is denied. And it'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....

So, you know, those—I try to make—within the confines where the legislature gives me discretion and the statute or the Supreme Court gives me discretion in the rule, I do try to consider that and make the judgment fair. But in this particular case on this motion under [Rule] 35(c) I don't think I have that discretion.

(Tr., p.20, L.25 – p.22, L.11; R, p.128.)

Frakes timely appealed. (R., pp.130-33.)

ISSUE

Frakes states the issue on appeal as:

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

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Frakes failed to show the district court erred by calculating credit for time served based on the date the bench warrant was served, as the statute requires?

ARGUMENT

Frakes Fails To Show The District Court Erred By Calculating Credit For Time Served Based On The Date The Bench Warrant Was Served, As The Statute Requires

Frakes argues the district court erred by not granting him 561 days “credit for time served for his period of incarceration when the Ada County Sheriff’s Office” did not “serve the outstanding January 2018 warrant.” (Appellant’s brief, pp.6, 8.) But Frakes, in effect, concedes that he is not entitled to credit under the plain application of the controlling statute. He makes his argument “mindful of the relevant statute’s requirement of service of the warrant” (Appellant’s brief, p.6), which goes as follows:

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 section 20-227, Idaho Code, and for any time served as a condition of probation under the withheld judgment or suspended sentence.

I.C. § 19-2603 (emphasis added).

The application of Section 19-2603 here is straightforward. The bench warrant was served on February 3, 2020 (R., p.102), which means Frakes was only entitled to credit from that date. The district court, bound by the statute, therefore correctly concluded it did not have authority to grant credit for the 561 days prior to that, “because the warrant was not, in fact, served.” (Tr., p.20, L.24 – p.21, L.3.) Frakes fails to show any error.

Despite the plain statutory language foreclosing his claim, Frakes contends he should still be “entitled to credit for this time as a matter of fairness,” or as otherwise called for by the “spirit” of the statute. (Appellant’s brief, pp.7-8.) He cites no controlling authority, however, that has construed the statute this way. (*See* Appellant’s brief.) Frakes simply cites a dissent

from State v. Barrett, 163 Idaho 449, 455, 414 P.3d 1188, 1194 (2018), which, along similar lines as Frakes, disfavored the majority’s interpretation of Section 18-309. (“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.”) The majority in Barrett, on the other hand, concluded the district court in that case correctly calculated credit for time served from “the date the arrest warrant was served.” Id. at 451, 454, 414 P.3d at 1190, 1193. Frakes therefore fails to show that, under the controlling statute or under Barrett, the outcome here would be any different.

Even if Frakes’s “matter of fairness” approach was the correct legal standard, he fails to show it would apply here. He claims that the purported “facts of this case” justify contravening the plain text of the statute; specifically, Frakes alleges “the only reason that [he] did not receive credit for this time was due to [the] Ada County Sheriff’s Office[’]s ‘willful failure’ to serve the outstanding January 2018 bench warrant.” (Appellant’s brief, pp.1, 6 (quoting R., p.124).)

But even assuming such a “willful failure” could ever justify ignoring the statute, Frakes fails to show that is what happened here. The district court made no factual findings as to why the warrant was not served. (See Tr., pp. 16-23.) Nothing in this record explains why the warrant wasn’t served, much less shows the delay was intentional or knowing. (See R.) Frakes assumes on appeal that the Ada County Sheriff’s Office “chose not to” serve the warrant, and that it “knowingly did not serve the warrant,” but that is pure speculation. (Appellant’s brief, pp.1, 4.) Even Frakes admitted this point below, refuting his own claim about the “indisputably unjust” delay with a more accurate concession: “it is important to keep in mind that there may be

some reasonable explanations for a delay in serving a Bench Warrant on a Defendant.” (R., p.111.)

Thus, even assuming a district court *could* rewrite or otherwise ignore the statute based on a knowing or intentional delay (which the state disputes), Frakes has failed to assemble a record on appeal showing such a delay. Under the plain language of Section 19-2603, Frakes is not entitled to credit for time served prior to the service of the arrest warrant. The district court properly applied the statute and denied the motion, and Frakes fails to show any error.

CONCLUSION

The state respectfully requests this Court affirm the district court’s denial of Frakes’s Rule 35 motion.

DATED this 1st day of April, 2021.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of April, 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:

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/s/ Kale D. Gans
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KDG/dd