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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 48603-2021
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR-FE-2011-18221
)
 PHILIP RAYMOND CHURCH,)
)
 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 JASON D. SCOTT
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PHILIP RAYMOND CHURCH
7121 San Fernando
Boise, Idaho 83701
(360) 560-2423

MARK A. KUBINSKI
Deputy Attorney General
Chief, Criminal Law Division

MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

**PRO SE
DEFENDANT-APPELLANT**

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STATEMENT OF THE CASE

Nature of the Case

Philip Raymond Church appeals from the district court's order denying his motion for additional credit for time served.

Statement of Facts and Course of Proceedings

In February 2012, Church pled guilty to Conspiracy to Commit Grand Theft by Extortion. (R., pp.41-47.) The district court imposed a unified 14-year sentence with four years fixed, but retained jurisdiction. (R., pp.52-55.) At the conclusion of the period of retained jurisdiction, the district court suspended Church's sentence and placed him on probation. (R., pp.66-71.) After multiple probation violations (R., pp.74-78, 82, 85-90, 92-96, 109), the district court revoked Church's probation and retained jurisdiction a second time (R., pp.111-114). At the conclusion of the second period of retained jurisdiction, the court again suspended Church's sentence and placed him on probation. (R., pp.116-120.) In November 2019, after several more probation violations (R., pp.121-127, 162, 169-170), the court revoked Church's probation, but imposed a reduced unified 10-year sentence with three and one-half years fixed (R., pp.171-174). The court granted Church credit for 860 days already served. (R., p.172.)

In December 2020, Church filed an I.C.R 35(c) motion for additional credit for time served. (R., pp.176-178.) In the motion, Church requested credit for an additional 2,230 days, for a total of 3,090 days. (Id.) Church argued that pursuant to I.C. § 19-2603, he was entitled to credit for all of the time he spent on supervised probation. (Id.)

The district court denied Church's motion. (R., pp.179-183.) The court concluded that pursuant to Idaho law, Church was not entitled to credit for time served while he was out of custody on probation. (Id.) Additionally, in re-calculating the time Church was actually entitled to, the

court discovered that Church was entitled to only 856 days credit, rather than the previously granted 860 days. (R., p.181.) Church subsequently filed a motion for reconsideration, and to proceed *pro se* in this case. (R., pp.184-188.) The district court denied the motion for reconsideration and granted the motion to proceed *pro se*. (R., pp.194-196.) Church timely appealed from the district court's order denying his motion for additional credit for time served. (R., pp.197-202.)

ISSUE

Church states the issue on appeal as:

Did the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada error [sic] when they [sic] fail[ed] to grant the Defendant time served in according [sic] to Idaho Legislation Idaho Statute section 19-[]2603 (Pronouncement and execution of Judgment After Violation of Probation).

(Appellant's brief, p.12.)

The state rephrases the issue on appeal as:

Has Church failed to demonstrate that the district court erred in denying his motion for additional credit for time served?

ARGUMENT

Church Has Failed To Demonstrate That The District Court Erred In Denying His Motion For Additional Credit For Time Served

A. Introduction

Church contends that the district court erred in denying his motion for additional credit for time served. (Appellant’s brief, pp.13-16.) Specifically, he contends that the district court erred in concluding that I.C. § 19-2603 did not allow it to grant him credit for time he spent out of custody on supervised probation. (Id.) However, a review of the record reveals that the district court correctly applied the law in denying Church’s motion.

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. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005) (citing State v. Hale, 116 Idaho 763, 779 P.2d 438 (Ct. App. 1989)). The appellate courts “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.” State v. Covert, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006) (citing State v. Davis, 139 Idaho 731, 734, 85 P.3d 1130, 1133 (Ct. App. 2003)).

C. The District Court Correctly Determined That Church Was Not Entitled To Credit For Time Served For The Periods He Was Out Of Custody And On Supervised Probation

The objective of statutory interpretation is to give effect to legislative intent. State v. Pina, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010); Robison v. Bateman-Hall, Inc., 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). Because the best guide to legislative intent is the wording of the statute

itself, the interpretation of a statute must begin with its literal words. Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011); State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). The words of a statute ““must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.”” Verska, 151 Idaho at 893, 265 P.3d at 506 (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003)). “[W]here statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.” Id. (quoting City of Sun Valley v. Sun Valley Co., 123 Idaho 665, 667, 851 P.2d 961, 963 (1993)).

Idaho Criminal Rule 35(c) provides that defendant may make a motion to correct a court’s computation of credit for time served at any time. Idaho Code § 19-2603 provides that a defendant is entitled to receive credit for: (1) “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”; (2) “for any time served following an arrest of the defendant pursuant to section 20-227, Idaho Code”; and (3) “for any time served as a condition of probation under the withheld judgment or suspended sentence.”

In this case, the district court properly recognized that Church was not entitled to credit for time he spent out of custody and on probation.¹ The plain language of I.C. § 19-2603 permits credit for time served only for time *actually served* following an arrest, the service of a

¹ In denying Church’s motion, the district court also recalculated Church’s credit for time served and reduced the amount of days from 860 to 856; and concluded that it did not have authority to consider Church’s request with respect to the time Church served in prison after the November 2019 execution of his sentence, as such challenges can only be made in habeas litigation (citing Mickelsen v. Idaho State Corr. Inst., 131 Idaho 352, 355, 955 P.2d 1131, 1134 (Ct. App. 1998)). (R., pp.179-183). On appeal, Church does not challenge either of these determinations. (See generally Appellant’s brief.)

bench warrant, or where jail time is served as a condition of probation. As the Idaho Court of Appeals further recognized in rejecting a similar to Church's in State v. Stevenson, 157 Idaho 798, 801-802, 339 P.3d 1202, 1205-1206 (Ct. App. 2014), under Idaho law, "credit for time served is awarded only for periods of *incarceration*." (emphasis in original) (citing I.C. § 18-309; Taylor v. State, 145 Idaho 866, 869, 187 P.3d 1241, 1244 (Ct. App. 2008); State v. Climer, 127 Idaho 20, 22, 896 P.2d 346, 348 (Ct. App. 1995)). Since credit for time served is awarded only for periods of *incarceration*, and Church was not incarcerated while he was out of custody on probation, he, like Stevenson, was not entitled to credit for time during periods in which his sentence was suspended and he was on probation.

The only authority Church cites in support of his contrary interpretation of I.C. § 19-2603 is an unpublished² Court of Appeals opinion, State v. Johnston, No. 46999, 2020 WL 1866923 (Ct. App. 2020) (unpublished). Church asserts that in that case, Johnston "received credit for time serve[d] while on probation when his probation was revoked." (Appellant's brief, p.14.) This is incorrect. The issue in Johnston was whether the defendant was entitled to credit for time served upon the *issuance* of a bench warrant, or only upon the actual *service* of that warrant. Johnston, 2020 WL 1866923. Johnston did not seek, and was not granted, credit for time while he was out of custody on probation. See id.

Because the district court correctly concluded that Church was not entitled to credit for time served during the periods he was out of custody and on supervised probation, Church cannot demonstrate that the district court erred in denying his motion requesting such.

² As an unpublished opinion, Johnston is subject to the rule, quoted in the Johnston opinion itself, that "[e]xcept to the extent required by res judicata, collateral estoppel, the law of the case doctrine or any other similar principle of law, no unpublished opinion shall be cited as authority to any court." See also Idaho Supreme Court Operating Rule 15. The state cites Johnston not as authority, but only to respond to Church's incorrect assertion about that case.

CONCLUSION

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

DATED this 7th day of July, 2021.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7th day of July, 2021, served a true and correct paper copy of the foregoing BRIEF OF RESPONDENT by placing the copy in the United States mail, postage prepaid, addressed to:

Philip Raymond Church
7121 San Fernando
Boise, ID 83701

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General