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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46389
 Plaintiff-Appellant,)
) Kootenai County Case No.
 v.) CR-2016-21670
)
 CHRISTOPHER NEAL OSBORN,)
)
 Defendant-Respondent.)
 _____)

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE CYNTHIA K.C. MEYER, District Judge
HONORABLE CLARK A. PETERSON, Magistrate Judge**

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's intermediate appellate decision reversing the magistrate's order denying a motion for credit for time served.

Statement Of The Facts And Course Of The Proceedings

Officers responded to a report of screaming and potential domestic violence. (R., p. 24.) The victim's roommate reported that Christopher Osborn, the victim's boyfriend, was on the scene, often carried a knife, and had previously told the victim he intended to kill her. (Id.) Officers found Osborn in the garage and arrested him. (Id.) The victim, Terry, who was visibly upset and scared, told officers that, despite a no contact order being in place, Osborn had come to the house earlier that day, saying he needed to get some of his property, and then refused to leave. (Id.) At that time he threatened to murder the victim. (Id.) He eventually left, but returned later, entering the house and confronting the victim in a room. (Id.) She screamed, and her roommate called the police. (Id.)

The state charged Christopher Osborn with two misdemeanor counts of violating a no contact order. (R., p. 13.) Osborn pled guilty to both counts. (R., p. 29.) The magistrate imposed consecutive sentences of 365 days on each count; on the first count the magistrate ordered Osborn to serve 60 days and suspended 305 days, and on the second count the magistrate suspended the entire sentence. (R., pp. 29, 39-40.) The magistrate placed Osborn on supervised probation for two years. (R., pp. 29, 39-41.)

Osborn failed to report to the probation department as ordered, and the state requested an arrest warrant on a probation violation. (R., pp. 42-45.) The magistrate issued a warrant for Osborn's arrest. (R., p. 6.)

A few weeks later, police arrested Osborn for kidnapping, violating the no contact order again, and on warrants for probation violations. (R., pp. 52-56.) Police had responded to a report by a neighbor who spotted Osborn at Terry's house. (R., p. 54.) When Osborne saw police he fled inside, resulting in a standoff. (R., p. 55.) Police ended the standoff by breaching the back door and entering. (R., pp. 55-56.) They found Osborn hiding in an upstairs bedroom and Terry hiding in the attic crawlspace. (R., p. 56.) Terry reported that Osborn had dragged her into the house by her hair, accusing her of calling the police. (R., p. 60.) He then pushed her upstairs and threatened to kill her. (Id.) She stated she climbed into the attic to get away from Osborn. (Id.) She only spoke with officers reluctantly, as she appeared to be afraid of Osborn. (Id.) The state amended the probation violation allegations to include the commission of the new offenses. (R., pp. 48-49.)

Osborn appeared in custody before the magistrate on the probation violation in this case. (R., p. 62.) The court entered a denial on the probation violation and set it for an evidentiary hearing. (Id.)

At the scheduled evidentiary hearing Osborn admitted violating his probation. (R., p. 66.) The magistrate imposed the consecutive sentences. (R., pp. 68-71.) The magistrate granted credit for 240 days served. (Id.) The magistrate's calculation granted 67 days of pre-sentencing time served against both counts, but post-sentencing time served was applied consecutively against the consecutive sentences. (R., p. 69.)

Osborn moved to correct an illegal sentence, claiming that he was entitled to concurrent time served on his consecutive sentences. (R., pp. 72-77.) The magistrate denied the motion, concluding that Osborn was serving his sentences consecutively post-

sentencing, and therefore was not entitled to concurrent time after his arrest on probation violations. (R., pp. 83-84; Tr., p. 9, L. 11 – p. 10, L. 15.)

Osborn filed a notice of appeal to the district court. (R., pp. 86-88.) The district court reversed, concluding that a defendant is entitled to concurrent credit for time served on consecutive sentences after an arrest on a probation violation. (R., pp. 156-61.) The state filed a timely notice of appeal from the district court's intermediate appellate decision. (R., pp. 184-87.)

ISSUE

Did the district court err by concluding Osborn was entitled to concurrent credit for time served on his consecutive sentences following his arrest for a probation violation?

ARGUMENT

The District Court Erred By Concluding Osborn Was Entitled To Concurrent Credit For Time Served On His Consecutive Sentences Following His Arrest For A Probation Violation

A. Introduction

The district court accurately set forth the relevant facts and procedural history of the case. (R., pp. 156-57.) Osborn was incarcerated for 67 days before sentencing. (R., p. 157.) The magistrate court imposed consecutive sentences, which it suspended and placed Osborn on probation, and gave Osborn credit for pre-sentencing time served against both sentences (134 days total against the consecutive sentences). (Id.) After sentencing Osborn was incarcerated for 106 days between his arrest on the warrant for his probation violations and execution of his sentences. (Id.) The magistrate granted this time served as consecutive—against one sentence at a time. (Id.) Thus, the total time served credited against the consecutive sentences was 240 days (134 + 106). (Id.)

The district court determined the magistrate erred by concluding that Osborn was serving his consecutive sentences consecutively while incarcerated after his arrest on the probation violations, and that he was, as a matter of law, serving his consecutive sentences concurrently. (R., pp. 158-160.) The district court erred.

B. Standard Of Review

An appellate court “freely reviews the interpretation of a statute and its application to the facts.” St. Luke’s Reg’l Med. Ctr., Ltd. v. Bd. of Comm’rs of Ada Cty., 146 Idaho 753, 755, 203 P.3d 683, 685 (2009). This standard applies both when the statute is plain on its face and when it is ambiguous and requires statutory interpretation. Id. “On review of a decision rendered by a district court in its intermediate appellate capacity, the

reviewing court directly reviews the district court's decision to determine whether it correctly decided the issues presented to it on appeal." State v. Amstad, 164 Idaho 403, 431 P.3d 238, 240 (2018) (internal citations and brackets omitted).

C. The District Court's Opinion Is Contrary To The Plain Language Of The Relevant Statute

"A construing court's primary duty is to give effect to the legislative intent and purpose underlying a statute." Davaz v. Priest River Glass Co., 125 Idaho 333, 336, 870 P.2d 1292, 1295 (1994). "Where a statute is clear and unambiguous, the expressed intent of the Legislature shall be given effect without engaging in statutory construction." City of Idaho Falls v. H-K Contractors, Inc., 163 Idaho 579, 582, 416 P.3d 951, 954 (2018) (internal quotations and brackets omitted). "Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction." Curlee v. Kootenai Cty. Fire & Rescue, 148 Idaho 391, 398, 224 P.3d 458, 465 (2008) (internal quotations omitted).

The statutory language is plain and unambiguous. The statute states, in applicable part: "The defendant shall receive credit for time served from the date of service of a bench warrant" I.C. § 19-2603. This language is plain. By granting consecutive credit for time served against the consecutive sentences the magistrate granted "credit for time served from the date of service of a bench warrant." Not giving concurrent credit against the consecutive sentences in no way deprived Osborn of "credit for time served from the date of service of a bench warrant." Osborn was serving his consecutive sentences from the moment of his arrest, and was given full credit for that service.

The district court's conclusion that Osborn was entitled to concurrent credit against his consecutive sentences is contrary to the plain language of the statute. Rather than analyze the language of the applicable statute, however, the district court relied on the interpretation of a different statute, I.C. § 18-309. (R., pp. 158-59.) This analysis is flawed.

Idaho Code section 18-309 provides that a defendant is entitled to “receive credit in the judgment 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.” (Emphasis added.) This language “plainly gives credit for prejudgment time in custody against each count's sentence.” State v. Owens, 158 Idaho 1, 4, 343 P.3d 30, 33 (2015). The statutory language that credit is to be given for time incarcerated “for the offense” is crucial to this conclusion: “The statute has a mandatory directive that specifically conditions credit for time served on the fact that the incarceration was for ‘the offense’ for which the judgment was entered.” Id. Indeed, had the Legislature used a “description other than ‘the offense,’ the outcome would be different.” Id.

As is readily apparent by a comparison of the two statutes, I.C. § 19-2603 contains no language similar to the “for the offense” language found in I.C. § 18-309. While the latter provides for credit for time incarcerated “for the offense,” I.C. § 18-309, the former provides for credit for incarceration “from the date of service of a bench warrant,” I.C. § 19-2603. Because the Legislature in I.C. § 19-2603 used a “description other than ‘the offense,’” or any functionally equivalent or even similar language, “the outcome [should] be different.” Owens, 158 Idaho at 4, 343 P.3d at 33.

The language of I.C. § 19-2603 is plain. It requires credit for incarceration “from the date of service of a bench warrant,” credit which Osborn received. I.C. § 19-2603.

Unlike pre-sentencing credit for time served, Osborn had been sentenced to consecutive sentences. Thus, when arrested for the probation violation, Osborn began serving those sentences. Had his sentences been concurrent, his service of those sentences after arrest would have been concurrent. The district court erred under the plain language of the applicable statute when it concluded that Osborn was entitled to concurrent credit while serving consecutive sentences merely because that service was the result of a warrant for a probation violation.

Application of the rules of statutory interpretation leads to this same result. To ascertain legislative intent the court should examine “the context of [the statutory] words, the public policy behind the statute, and its legislative history.” State v. Beard, 135 Idaho 641, 646, 22 P.3d 116, 121 (Ct. App. 2001). All of these support the conclusion that the Legislature intended that a defendant arrested on a probation violation warrant be considered as serving his sentence. Specifically, there is nothing to suggest that the Legislature intended post-sentencing incarceration to be credited in the same way as pre-sentencing incarceration. The provisions are in entirely separate titles of the Idaho Code. Moreover, under Idaho law concurrent service is the norm unless the district court exercises its discretion to run sentences consecutively. I.C. § 18-308. Interpreting I.C. § 19-2603 to mandate concurrent service of sentences which the sentencing court has ordered served consecutively undermines that legislatively granted discretion. Nothing in the statute’s context, public policy or legislative history supports the district court’s interpretation of I.C. § 19-2603.

By granting the credit it did, the magistrate complied with the law. The district court erred when it reversed.

CONCLUSION

The state respectfully requests this Court to reverse the district court's intermediate appellate decision and reinstate the magistrate's order denying Osborn's Rule 35 motion.

DATED this 5th day of March, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of March, 2019, served a true and correct copy of the foregoing BRIEF OF APPELLANT to the attorney listed below by means of iCourt File and Serve:

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/s/ Kenneth K. Jorgensen
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KKJ/dd