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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff/Appellant,)
)
 v.)
)
 CHRISTOPHER NEAL OSBORN)
)
 Defendant/Respondent.)
)
 _____)

RESPONDENT'S BRIEF
SUPREME COURT NO. 46389
Kootenai County Case No. CR-16-21670

RESPONDENT'S BRIEF

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

HONORABLE CYNTHIA MEYER
District Judge
HONORABLE CLARK PETERSON
Magistrate Judge

ANNE TAYLOR
Kootenai County Public Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from a Memorandum Decision and Order on Defendant's Appeal of Denial of Rule 35 Motion. The defendant had argued before the Magistrate Court that pursuant to the Idaho Supreme Court's reasoning in *State v. Owens*, 158 Idaho 1 (2015), he was entitled to credit on each offense he was being held on awaiting a probation violation adjudication. The Magistrate Court denied his Motion. The defendant timely appealed and the District Court reversed. The State timely appealed the District Court's ruling.

B. Course of Proceedings & Statement of Facts

Christopher Osborn was in jail on July 3, 2017, when he was served a bench warrant for a probation violation in this case. (R., pp. 52-56.) Magistrate Judge Walsh had previously sentenced him in this matter on two counts of violating a no contact order, placing him on concurrent probation but suspending consecutive jail sentences. (R., pp.29, 29-41.)

On October 17, 2017, 106 days later, Magistrate Judge Peterson imposed Mr. Osborn's sentences. (R., pp. 68-71.) The Magistrate Court declined to give 106 days credit on each count, finding that because the sentences were consecutive, the time served was against the consecutive sentence rather than each sentence. (R., p. 69.) Mr. Osborn filed a Rule 35 asking to correct the illegal sentence, which the Magistrate Court also denied. (R., p. 72-77.) He timely appealed. (R., pp. 86-88.)

On appeal, the District Court found that Mr. Osborn was correct that he must be given credit on each sentence he was being held on. (R., pp. 156-61.) The Court concluded that the

bench warrant for the probation violation was intended for each charge in the case. *Id.* The state timely appealed. (R., pp. 184-87.)

ISSUE ON APPEAL

- I. Whether consecutive jail sentences on two or more charges in a matter turn the charges into a single “judgment” for purposes of credit for time served pursuant to I.C. § 19-2603.

ARGUMENT

I.

A. Introduction

The District Court correctly ruled that as there is no law or rule that converts the sentences of two offenses that are run consecutive to one another into a singular legal entity a defendant held on a bench warrant for probation violations on two separate sentences receives concurrent credit until a disposition is entered.

B. Standard of Review

“As a general matter, it is a question of law as to whether a sentence is illegal or was imposed in an illegal fashion [under Idaho Criminal Rule 35], and this Court exercises free review over questions of law.” *State v. Lute*, 150 Idaho 837, 839 (2011) (citing *State v. Clements*, 148 Idaho 82, 84 (2009)).

C. No law exists that turns two separate offenses into one sentence for purpose of credit for time served in probation cases

The state argues that where a defendant is found guilty of two offenses and judgment is entered running the jail sentences consecutively, the two offenses morph into one judgment for

purposes of I.C. § 19-2603. The state never actually provides the language from the statute, referencing only a small part of the statute. The statute reads in full:

When the court finds that the defendant has violated the terms and conditions of probation, it may, if judgment has been withheld, pronounce any judgment which it could originally have pronounced, or, if judgment was originally pronounced but suspended, revoke probation. The time such person shall have been at large under such suspended sentence shall not be counted as a part of the term of his sentence. 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.

The state's argument relies on distinction between I.C. § 19-2603 and I.C. § 18-309 in that one refers to "the offense" and the other to "from the date of service of a bench warrant." But this is not the distinction. If I.C. § 19-2603 failed to reference what the bench warrant was for it seems unlikely it would be the right statute to cite to. Rather, I.C. § 19-2603 references the "judgment" and the "suspended sentence". The District Court cited to *State v. McCarthy*, 145 Idaho 397, 398 (Ct.App. 2008) and found that each probation and each sentence on which a defendant is being held must receive credit for time spent in custody awaiting disposition.

The state argues that in *State v. Owens*, 158 Idaho 1, 4 (2015), this Court held that only because of the use of the word "offense" did concurrent time prior to sentence need be given and because that word does not appear in I.C. § 19-2603, the above analysis is flawed. The state also points out that I.C. § 18-309 is in a different Title and so clearly the legislature intended a different outcome. The state seems to have lost sight of the fact that where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction. *In re Adoption of Doe*, 156 Idaho 345, 249 (2014). The language of I.C. § 19-2603

is plain in that time will be credit toward the sentence. As each offense has its own sentence pursuant to I.C. § 19-2601 the credit for time prior to a probation violation disposition must be toward each sentence a defendant is held on, regardless of whether those sentences were run consecutive to each other at the time originally suspended.

However, if the Court were to engage in statutory construction, it should look at I.C. § 18-308. That statute states:

When any person is convicted of two (2) or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction, in the discretion of the court, may commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

The legislature clearly does not turn consecutive sentences into a single sentence for purposes of I.C. § 19-2603. Additionally, the statute specifically states that the sentencing court may, when imposing sentence on a crime, and there is another convicted crime that has not been sentenced yet, sentence the defendant to imprisonment which commences on the termination of the other term. Thus, there are clearly separate terms of imprisonment. When a defendant is being held on a bench warrant for both terms, the defendant will get credit for predisposition time toward each term pursuant to I.C. § 19-2603. There is simply no statute that transforms separate crimes, offenses, judgments, or sentences into a unitary legal construct such that the state's argument could be correct.

CONCLUSION

This Court should find that a defendant is sentenced on an offense, pursuant to I.C. § 19-2601. There is no melding of sentences for purposes of I.C. § 19-2603. A person being held post-

sentence is being held post-sentence on each offense. Until such time as the Court revokes probation and imposes the suspended sentence or withheld judgment, the credit is accrued against each offense because the defendant is being held on each sentence. The only way to avoid this would be to issue bench warrants on one offense rather than all of them. Otherwise, there is no mechanism whereby multiple offenses with their own sentence can be treated as one sentence against which a defendant awaiting a hearing on a probation violation accrues credit.

This Court should affirm the District Court and dismiss this appeal.

DATED this 11 day of March, 2019.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY: /s/ Jay Logsdon
JAY LOGSDON, ISB 8759
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that I have this 11 day of March, 2019, 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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BY: /s/ Andrea Murray