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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.)
 _____)

REPLY 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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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

Idaho law requires that a defendant whose probation is revoked and his sentence executed “shall receive credit for time served from the date of service of a bench warrant.” I.C. § 19-2603. Because Osborn “receiv[ed] credit for time served from the date of service of a bench warrant,” he received what the law demanded, and the district court erred by reversing. (Appellant’s brief, pp. 6-8.) Osborn argues that because I.C. § 19-2603 refers to the “suspended sentence,” credit must be granted toward each suspended sentence. (Respondent’s brief, pp. 2-4.) His argument is unsupported by the plain language of the statute.

I.C. § 19-2603 has three sentences. First, it provides that after finding a probation violation the court may, “if judgment was originally pronounced but suspended, revoke probation.” This is what happened in this case. Judgment (including that Osborn’s sentences be served consecutively) was pronounced but suspended, Osborn violated his probation, and the magistrate revoked his probation. (R., p. 157.) Second, the statute states: “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.” I.C. § 19-2603. No one disputes that Osborn was not serving his sentence while he was out of custody on probation. Finally, the third sentence provides: “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. § 19-2603.¹

The statute does not mandate that time served as a result of an arrest on a probation violation be credited toward each sentence where those sentences are ordered to be served consecutively. Contrary to Osborn’s argument, the mere fact that the word “sentence” appears in the statute is not enough. Indeed, the word “sentence” appears only in relation to language stating that time at large is not credited and that time served as a condition of probation be credited, neither of which is relevant to resolving the issue on appeal. The relevant language requires only that time served as a result of an arrest on a probation violation be credited, and the magistrate correctly credited consecutive time while Osborn was serving consecutive sentences.

Osborn served 106 days on his consecutive sentences as a result of his arrest for his probation violation. The magistrate correctly granted Osborn 106 days credit for time served. The district court’s conclusion that Osborn was entitled to 212 days on his consecutive sentences is contrary to the plain language of the statute and legislative intent.

¹ The magistrate did order 20 days of “Discretionary Jail” but that time was never executed. (R., pp. 39-40.) Because Osborn did not serve time as a condition of probation, the last phrase of the third sentence, requiring credit for time served as a condition of probation, is not at issue here.

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 22nd day of March, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of March, 2019, served a true and correct copy of the foregoing REPLY 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