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State v. Keeton Appellant's Brief Dckt. 46693

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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**NO. 46693-2019**
Plaintiff-Respondent,	)	
	)	**BANNOCK COUNTY**
v.	)	**NO. CR-2018-6092**
	)	
JESSE A. KEETON,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

This case presents a matter of first impression for this Court—whether the district court must order credit for time served for prejudgment incarceration of a dismissed and then refiled case charging the same offense.

Jesse A. Keeton was in custody for thirty-two days following his arrest for a felony offense. The district court later dismissed the case without prejudice due to the State's charging error. About a month and one-half later, the State refiled and correctly charged Mr. Keeton with the same felony offense. After Mr. Keeton pled guilty and was sentenced, he moved for thirty-two days of credit for time served. The district court denied the motion because Mr. Keeton did not have a sentence imposed or a judgment in the dismissed case.

Mr. Keeton now appeals. He asserts the district court's order denying credit was in error. He argues the district court erred because the plain language of the credit for time served statute, as well as the Court's recent decisions in *State v. Brand*, 162 Idaho 189 (2017), and *State v. Owens*, 158 Idaho 1 (2015), mandate an award of credit for prejudgment incarceration on the same offense in a dismissed but then refiled case.

Statement of Facts and Course of Proceedings

On January 20, 2018, Mr. Keeton was arrested for driving under the influence ("DUI"), with a felony enhancement due to two prior DUIs within the last ten years. (R., pp.100–02, 125, 126.) He was transported to Bannock County Jail. (R., p.125.) Two days later, on January 22, the State filed a criminal complaint alleging a felony DUI. (R., pp.97–98, 126.) The case number was CR-2018-925-FE. (R., pp.97, 126.) On February 5, 2018, the magistrate bound Mr. Keeton over to district court after a preliminary hearing. (R., p.110.) On February 20, 2018, Mr. Keeton

was released from Bannock County Jail. (R., p.125.) He was in custody for thirty-two days. (R., p.125.)

In the complaint in CR-2018-925-FE, the State had alleged the two prior DUI convictions occurred on January 17, 2017, and January 4, 2018. (R., pp.97–98, 126–27.) However, the evidence at the preliminary hearing to prove the January 4 DUI was not a judgment of conviction. (R., p.110.) The State's evidence was a stipulation to a plea agreement. (R., p.110.) Accordingly, Mr. Keeton moved to dismiss CR-2018-925-FE or strike the felony enhancement because the State was unable to prove the prior January 4 DUI conviction. (R., pp.105–07.) On April 4, 2018, the district court granted his motion and dismissed CR-2018-925-FE without prejudice. (R., pp.114–16.)

On May 1, 2018, Mr. Keeton pled guilty and was sentenced for the January 4 DUI. (R., p.127.)

On May 24, 2018, the State refiled and, as in the first, case, alleged Mr. Keeton committed a felony DUI on January 20, 2018. (R., pp.10–12.) Also as in the first case, the State alleged the same two prior DUIs, but this time with a corrected date for the second DUI conviction: January 17, 2017, for the first and May 1, 2018, for the second. (R., pp.10.) Along with the criminal complaint, the State attached the same police report as attached with the first complaint. (R., pp.13–17, 99–103.)

Mr. Keeton waived a preliminary hearing, and the magistrate bound him over to district court. (R., p.47.) The State filed an Information Part I and II charging Mr. Keeton with a DUI and the felony enhancement. (R., pp.50–51, 52–53.) Mr. Keeton pled guilty as charged. (R., pp.74–75.)

On November 19, 2018, the district court held a sentencing hearing. (R., p.90; *see generally* Tr.) Mr. Keeton had been out of custody throughout the refiled case. (*See* R., pp.29, 35, 38–39, 47, 75–76.) His only time of prejudgment incarceration was from the initial arrest for the offense on January 20, 2018, until his release on February 20, 2018. (*See* R., p.125.) Accordingly, at sentencing, he asked for credit for time served. (Tr., p.5, L.20–p.6, L.10.) He argued:

> We feel that under State versus Brand, [162 Idaho 189,] that he was incarcerated for this DUI which occurred on January 20th. And although it's not the same case number, it is the same offense, under Idaho Code Section 18-309, which requires that a person receive credit for any period of incarceration prior to entry of judgment, if such incarceration was for the offense. . . . And so as noted, Jesse did spend 32 days in jail, and we're asking for credit for that time served.

(Tr., p.5, L.20–p.6, L.10.) The State responded, "In regard to the credit for time served issues, the state is not familiar with the case that he testifies has stated on the record but knows typically if a charge is refiled, everything starts over." (Tr., p.8, Ls.9–12.) The district court agreed, "That's the general rule. That's the rule I've always followed." (Tr., p.8, Ls.13–14.) The district court withheld judgment and placed Mr. Keeton on probation for four years. (Tr., p.10, Ls.22–23; R., p.91.) The district court also ordered him to serve thirty days in jail, with twenty days suspended and ten days at the discretion of his probation officer. (Tr., p.11, Ls.7–12; R., p.91.) On credit for time served, the district court ruled, "I disagree with [defense counsel's] analysis of the credit for time served. I've been through that multiple times." (Tr., p.11, Ls.4–6.)

Shortly after sentencing, Mr. Keeton moved for credit for time served pursuant to Idaho Criminal Rule 35(c). (R., pp.94–96.) He asked the district court to reconsider its ruling from sentencing. (R., p.94.) Mr. Keeton argued, under I.C. § 18-309 and *Brand*, he was entitled to credit because he was subject to prejudgment incarceration for an offense and then sentenced on the same offense, despite the State's initial charging error. (R., p.95.) In support of his motion,

Mr. Keeton included: (1) the criminal complaint and police report from the dismissed case (CR-2018-925-FE); (2) his motion to dismiss or strike the felony enhancement in CR-2018-925-FE; (3) the district court's order granting the motion to dismiss; (4) the criminal complaint and police report in the instant, refiled case; and (5) a letter from the Bannock County Sheriff's Office on Mr. Keeton's thirty-two days of prejudgment incarceration in Bannock County Jail in CR-2018-925-FE. (R., pp.97–125.)

On January 9, 2019, the district court denied the motion. (R., pp.126–28.) The district court reasoned:

> This directive [in I.C. § 18-309] is mandatory, in that a court must award a defendant credit for prejudgment incarceration. [*State v. Horn*, 124 Idaho 849, 850, 865 P.2d 176, 177 (Ct. App. 1993)]. The converse is also true, and a "defendant is not entitled to credit under I.C. § 18-309 for any time not actually spent incarcerated before judgment." [*State v. Moore*, 156 Idaho 17, 21, 319 P.3d 501, 505 (Ct. App. 2014).] A plain reading of the statute reveals that it only confers a right to credit "if the presentence incarceration was a consequence of or attributable *to the offense for which the sentence is imposed* (emphasis added)." [*State v. Vasquez,* 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005).] The credit only applies to cases where a judgment has been entered. The statute applies to "all offenses that provide a basis for the defendant's incarceration." [*State v. Brand*, 162 Idaho 189, 192, 395 P.3d 809, 812 (2017).]
>
> Here, Keeton did not have a sentence imposed in CR-2018-925-FE, as the case was dismissed. In the present case, Keeton was not incarcerated before judgment was entered on November 19, 2018. As there was no time spent on the case in which Keeton had a judgement [sic] entered or a sentence imposed (this case), the Court will not grant Keeton's request for credit for time served in his previously dismissed Bannock County case, CR-2018-925-FE.

(R., p.128 (footnotes omitted and footnote citations added in brackets).) Mr. Keeton timely appealed. (R., pp.130–32.)

ISSUE

Did the district court err when it denied Mr. Keeton's motion for credit for time served for his prejudgment incarceration in a dismissed but then refiled case with the same offense?

ARGUMENT

The District Court Erred When It Denied Mr. Keeton's Motion For Credit For Time Served For His Prejudgment Incarceration In A Dismissed But Then Refiled Case With The Same Offense

A. Introduction

Idaho Code § 18-309 mandates an award of credit for any prejudgment incarceration "if such incarceration was for the offense or an included offense for which the judgment was entered." I.C. § 18-309(1). In *Owens* and *Brand*, the Court identified "the offense" as the operative term to determine whether a defendant is entitled to credit. Mr. Keeton was incarcerated prior to the entry of judgment for "the offense" for which the judgment was entered, yet the district court denied him credit for time served. The district court denied credit because, even though "the offense" remained the same, the case charging that offense was dismissed and later refiled. Mr. Keeton asserts the district court's denial of credit was in error. The plain language of I.C. § 18-309, and the Court's analysis of that language in *Owens* and *Brand*, require an award of credit for any prejudgment incarceration in dismissed but refiled case with the same offense.

B. Standard Of Review

The Court exercises "free review over statutory interpretation because it is a question of law." *Owens*, 158 Idaho at 3.

C. The District Court Should Have Granted Mr. Keeton's Motion For Credit For Time Served Because, Although The Case Was Initially Dismissed And Later Refiled, Mr. Keeton Was Incarcerated For The Offense For Which The Judgment Was Entered

Idaho Code § 18-309 governs credit for time served for prejudgment incarceration. *Owens*, 158 Idaho at 3. It states in relevant part: "In computing the term of imprisonment, the

person against whom the judgment was entered, shall 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." I.C. § 18-309(1). This "part of the statute requires courts to give a person credit on his sentence for the time he served in jail before he was convicted of or pled guilty to his crime." *Owens*, 158 Idaho at 3 (citing *Law v. Rasmussen*, 104 Idaho 455, 457 (1983)).

In two recent cases, *Brand* and *Owens*, the Court held the language of I.C. § 18-309 is unambiguous. *Brand*, 162 Idaho at 192; *Owens*, 158 Idaho at 4–6.

> Statutory interpretation begins with the statute's plain language. *State v. Burnight*, 132 Idaho 654, 659 (1999). That language "is to be given its plain, obvious and rational meaning." *Id.* If that language is clear and unambiguous, "the Court need merely apply the statute without engaging in any statutory construction." *Id.*

Brand, 162 Idaho at 191. Both *Brand* and *Owens* examined the statute's specific condition also at issue here: "if such incarceration was for the offense . . . for which the judgment was entered." *Brand*, 162 Idaho at 191–93; *Owens*, 158 Idaho at 3–6. After applying the plain language, *Brand* and *Owens* both held this condition mandated an award of credit "for the offense," despite other factors pertaining to the defendant's incarceration. *Brand*, 162 Idaho at 192–93; *Owens*, 158 Idaho at 3–6.

First, in *Owens*, the Court considered whether a defendant received credit for time served on each offense in a multiple count case with consecutive sentences. 158 Idaho at 3–6. The *Owens* Court held the statute's plain language mandated an award of credit for each offense. *Id.* at 4. The Court reasoned:

> First, Idaho Code section 18-309 mandates that a court gives a defendant credit for his time served because the statute states that a person "shall" receive credit. Second, section 18-309 specifies that a person "shall receive credit in the judgment for *any* period of incarceration prior to entry of judgment . . . ." I.C. § 18-309. The statute continues to provide that a defendant gets the credit

> only on a requirement that incarceration was for "the offense or an included offense for which the judgment was entered." 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. (second emphasis added). Thus, the condition "simply describes the type of incarceration that a defendant gets credit for." *Id.* "[A]s long as the defendant's prejudgment jail time was for 'the offense' the defendant was convicted of and sentenced for, the court gives the defendant that credit." *Id.* If this condition is met, the statute "does not limit that credit in any way." *Id.* In light of this plain language, the defendant in *Owens* was entitled to credit for his prejudgment incarceration "on each of the eight separate offenses," regardless of the fact that his sentences were to be served consecutively. *Id.*

Second, in *Brand*, the Court considered whether a defendant received credit for time served on an offense when the defendant's prejudgment incarceration was "both initiated and maintained due to a prior, unrelated offense." 162 Idaho at 191. The *Brand* Court again held the statute's plain language mandated an award of credit for the offense. *Id.* at 192–93. The Court explained:

> Section 18-309 does not limit credit for time served only if, for example, the offense for which the defendant is jailed is that which caused the defendant's initial deprivation of liberty. Rather, section 18-309 applies to all offenses that provide a basis for the defendant's incarceration. It is irrelevant if the defendant's incarceration rests on several, unrelated offenses, as the fact remains that each offense provides a basis for the defendant's incarceration.

Id. at 192. The statute's emphasis on "the offense" led the Court to develop a two-part test: (1) whether the defendant was incarcerated during the time between his arrest and the entry of the judgment of conviction and (2), if so, whether "the relevant offense . . . provides a basis for the defendant's incarceration," irrespective of "any alternative reason for the defendant's incarceration." *Id.* at 192–93. Applying this test from the statute's plain language, the defendant in *Brand* was entitled to credit for his prejudgment incarceration for an offense, even though he

was already in custody on an unrelated charge at the time of service of the arrest warrant for the offense. *Id.* at 190, 193.

As in *Brand* and *Owens*, the "offense" language also controls here. When a case charging a particular offense is dismissed and then a new case is filed with the same offense, the plain language of I.C. § 18-309(1) mandates an award of credit for that offense. It is "irrelevant" whether the defendant was incarcerated for that offense during the dismissed case or the refiled case. *Brand*, 162 Idaho 192. "[T]he fact remains" that the offense "provides a basis for the defendant's incarceration." *Id.* The district court must give credit for "any" prejudgment incarceration for "the offense" resulting in the defendant's conviction and sentence. *Owens*, 158 Idaho at 4 ("[A]s long as the defendant's prejudgment jail time was for 'the offense' the defendant was convicted of and sentenced for, the court gives the defendant that credit.").

The "offense" language must "steer" this "result" because any other interpretation would alter the statute's plain language. *Brand*, 162 Idaho at 192. In fact, the *Owens* Court recognized that a term other than "the offense" would lead to different results: "If the legislature had delineated credit for incarceration for 'each case' or another description other than 'the offense,' the outcome would be different." 158 Idaho at 4; *see also Brand*, 162 Idaho 192 (quoting this language from *Owens*). For instance, if I.C. § 18-309 required the incarceration for "the case number" for which the judgment was entered, then it is likely a defendant would not receive credit for a dismissed but then refiled case charging the same offense. The refiled case would have a different case number. The word "offense," however, focuses on the underlying criminal conduct. "Offense" is defined as the act (or failure to act) committed in violation of the law. *See* I.C. § 18-109 ("A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it . . . ."); *see also* Offense, BLACK'S LAW DICTIONARY (10th ed.

2014) ("A violation of the law; a crime, often a minor one."); Crime, BLACK'S LAW DICTIONARY ("An act that the law makes punishable; the breach of a legal duty treated as the subject-matter of a criminal proceeding."). Thus, the legislature's use of "the offense" refers to prejudgment incarceration for the criminal act as charged by the State. The plain meaning of "the offense," rather than another description, mandates an award of credit for a dismissed and refiled case charging an identical offense.

Applying the plain language, Mr. Keeton is entitled to credit for his thirty-two days of prejudgment incarceration. The "relevant offense"—the felony DUI committed on January 20—provided "the basis" for his incarceration. *Brand*, 162 Idaho at 193. Put another way, the district court must give Mr. Keeton credit "as long as [his] prejudgment jail time was for 'the offense' the defendant was convicted of and sentenced for." *Owens*, 158 Idaho at 4; *accord Brand*, 162 Idaho at 193. He has met that requirement. Despite the fact that the case as a whole was dismissed and refiled (due to the State's error in felony enhancement), the offense remained the same. (*See* R., pp.10–12, 97–98, 126.) Mr. Keeton should have received credit for the time that he was incarcerated for the felony DUI offense.

In light of I.C. § 18-309's plain language, *Owens*, and *Brand*, the district court's order denying Mr. Keeton credit was in error. The district court incorrectly focused on the judgment and the case. The district court determined, "The credit only applies to cases where a judgment has been entered." (R., p.128.) The district court reasoned, because Mr. Keeton did not have a sentenced imposed in the dismissed case and was not incarcerated in the instant case, "there was no time spent on the case in which Keeton had a judgement [sic] entered or sentence imposed (this case)." (R., p.128.) Although it is true that credit can only be awarded in a case where a judgment has been entered, the "judgment" does not provide the basis for credit. The offense

does. Credit is awarded by "the offense," and no other factor. *See Brand*, 162 Idaho at 192–93; *Owens*, 158 Idaho at 3–6. In using the judgment and the case to determine credit, the district court altered the statute's plain language and acted contrary to the Court's holdings in *Owens* and *Brand.* Pursuant to the plain language of I.C. § 18-309, the district court was required to give Mr. Keeton credit for his prejudgment incarceration for the felony DUI offense.

CONCLUSION

Mr. Keeton respectfully requests that this Court reverse the district court's order denying credit for time served and remand this case to the district court with an instruction to enter an order granting thirty-two days of credit for time served.

DATED this 18th day of April, 2019.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of April, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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JCS/eas