

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) No. 46693-2019  
 Plaintiff-Respondent, )  
 ) Bannock County Case No.  
 v. ) CR-2018-6092  
 )  
 JESSE A. KEETON, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

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

\_\_\_\_\_  
**HONORABLE STEPHEN S. DUNN**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Jesse A. Keeton appeals from his judgment of conviction for felony DUI. He challenges the district court's denial of his motion for credit for time served.

### Statement Of The Facts And Course Of The Proceedings

The district court set forth the relevant facts and procedure. (R., pp. 126-27.<sup>1</sup>) Keeton was arrested for felony DUI on January 20, 2018, in case number CR-2018-925-FE. (Id.) Case number CR-2018-925-FE was dismissed without prejudice because one of the prior DUI convictions serving to enhance the DUI to a felony had not yet been reduced to a judgment. (Id.) After that was done, this case, CR-2018-6092-FE, was filed charging Keeton with a felony DUI committed on January 20, 2018. (Id.)

Keeton pled guilty in this case, and the district court withheld judgment. (Id.) "No credit was given for any pre-judgment time served as no time was served on this case." (R., p. 127.) Keeton filed a motion seeking credit for time served in this case for time served while CR-2018-925-FE was pending. (Id.) The district court denied that motion. (R., pp. 126-28.) Keeton appealed from the denial of his motion. (R., pp. 130-32.)

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<sup>1</sup> A copy of the district court's Decision and Order Denying Defendant's Motion for Credit for Time Served is attached to this brief and incorporated herein by reference.

## ISSUE

Keeton states the issue on appeal as:

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?

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Keeton failed to show error in the district court's denial of credit for time served in a different, dismissed, case?

## ARGUMENT

### Keeton Has Failed To Show Error In The District Court's Denial Of Credit For Time Served In A Dismissed Case

#### A. Introduction

The district court denied Keeton's motion for credit for time served because Keeton served no time in this case, and was not entitled to time served in relation to a different case. (R., pp. 126-28.) Keeton argues the district court erred because the time he served was for the "same offense." (Appellant's brief, pp. 6-11.) Keeton has failed to show that he is entitled to credit for time served in a different case.

#### B. Standard Of Review

A trial court's factual findings will not be disturbed on appeal unless they are clearly erroneous. State v. Perry, 144 Idaho 266, 269, 159 P.3d 903, 906 (Ct. App. 2007) (citing State v. Cross, 132 Idaho 667, 669, 978 P.2d 227, 229 (1999); State v. Ricks, 122 Idaho 856, 863, 840 P.2d 400, 407 (Ct. App. 1992)). "We exercise free review over statutory interpretation because it is a question of law." State v. Owens, 158 Idaho 1, 3, 343 P.3d 30, 32 (2015).

#### C. Keeton Has Failed To Show Error In The District Court's Denial Of Credit For Time Served In A Dismissed Case

A defendant "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). Under this statute, "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.'" Owens, 158 Idaho at 4, 343 P.3d at 33

(quoting I.C. § 18-309(1)). Thus, where a defendant is incarcerated on multiple charged offenses, he is entitled to “credit for time served on each of his offenses.” Id. Likewise, a defendant already incarcerated on different charges begins accruing credit for time served upon service of a warrant. State v. Brand, 162 Idaho 189, 192-93, 395 P.3d 809, 812-13 (2017).

Here, as found by the district court, Keeton served no time in relation to this case. (R., p. 127 (“no time was served on this case”).) For the reasons stated by the district court in its opinion, attached to this brief and incorporated herein, Keeton was not entitled in this case to time served as the result of a different case.

#### CONCLUSION

The state respectfully requests this Court to affirm the district court.

DATED this 10th day of May, 2019.

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

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of May, 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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/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd

# APPENDIX A



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

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-2018-6092-FE
	)	
vs,	)	DECISION AND ORDER DENYING
	)	DEFENDANT'S MOTION FOR CREDIT
JESSE KEETON,	)	FOR TIME SERVED
	)	
Defendant.	)	

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This matter comes before the Court on the Defendant's motion for credit for time served. After having reviewed the argument and other filings submitted by the Defendant together with the relevant statutes and case law the Court now DENIES the motion.

**BACKGROUND<sup>1</sup>**

On January 20, 2018, Defendant Jesse A. Keeton ("Keeton") was arrested for the offense of Driving Under the Influence ("DUI"), a third offense, in Bannock County case CR-2018-925-FE. The charging document in that case alleged that Keeton's conduct on January 20, 2018, constituted a third DUI offense.<sup>2</sup> This allegation was based upon two previous pleas or

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<sup>1</sup> Unless otherwise indicated, the facts upon which the Court relies in ruling on this Motion are taken from the pleadings, oral argument, records, and other files in this matter.

<sup>2</sup> See Order Granting Motion to Dismiss Criminal Complaint, Bannock County case CR-2018-925-FE.

convictions for DUI entered on January 17, 2017, and January 4, 2018. Subsequently, this case was dismissed without prejudice on April 4, 2018, for procedural reasons.<sup>3</sup>

Following the dismissal, Keeton entered a plea of guilty and was sentenced on a second offense DUI in Bannock County Magistrate Court on May 1, 2018. On July 11, 2018, the State filed a prosecutor's information for DUI, third offense, in the present case. This information was based on a criminal complaint and affidavit of probable cause referring to two previous pleas or convictions for DUI entered by Keeton on January 17, 2017, and January 4, 2018.

On October 1, 2018, Keeton pleaded guilty to the charge of Driving Under the Influence of Alcohol and or Drugs, a repeated offense. On November 20, 2018, Keeton was given a withheld judgment pursuant to serving four (4) years of probation. Additionally, Keeton was ordered to serve a term of 30 days in the Bannock County Jail, with 20 days suspended and the remaining 10 to be served at the discretion of his probation officer. No credit was given for any pre-judgement time served as no time was served on this case. On November 28, 2018, Keeton filed a Motion pursuant to I.C.R. 35 requesting the Court reconsider denying his credit for time served in relation to CR-2018-925-FE.

### ANALYSIS

The basis for receiving credit for time served before the Court enters judgment is found in I.C. § 18-309, as follows:

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.

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<sup>3</sup> Order Granting Motion to Dismiss Criminal Complaint, Bannock County case CR-2018-925-Fe. The trial court granted a motion to dismiss on the basis that a final judgement had yet to be entered on second case and therefore the State could not use it to show that the instant conduct constituted a third offense under the statute.

This directive is mandatory, in that a court must award a defendant credit for prejudgment incarceration.<sup>4</sup> 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.”<sup>5</sup> 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).”<sup>6</sup> 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.”<sup>7</sup>

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 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.

### CONCLUSION

Therefore, the Defendant’s motion for credit for time served is hereby DENIED.

IT IS SO ORDERED.

Signed: 1/8/2019 02:51 PM



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STEPHEN S. DUNN  
District Judge

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<sup>4</sup> *State v. Horn*, 124 Idaho 849, 850, 865 P.2d 176, 177 (Ct. App. 1993).

<sup>5</sup> *State v. Moore*, 156 Idaho 17, 21, 319 P.3d 501, 505, (Ct. App. 2014).

<sup>6</sup> *State v. Vasquez*, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005).

<sup>7</sup> *State v. Brand*, 162 Idaho 189, 192, 395 P.3d 809, 812 (2017).

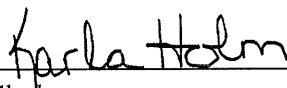
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the  9  day of  January , 2019, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Bannock County Public Defender's Office ( ) U.S. Mail  
( ) Overnight Delivery  
(  ) Email  
( ) Facsimile

Bannock County Prosecutor's Office ( ) U.S. Mail  
( ) Overnight Delivery  
(  ) Email  
( ) Facsimile

DATED this  9  day of  January , 2019, 1/9/2019 02:14 PM

  
\_\_\_\_\_  
Deputy Clerk