

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

STATE OF IDAHO, )  
 ) No. 46410-2018  
 Plaintiff-Respondent, )  
 ) Kootenai County Case No.  
 v. ) CR-2017-21484  
 )  
 MICHAEL WATSON CONICONDE, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

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

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

\_\_\_\_\_  
**HONORABLE LANSING L. HAYNES**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Michael Watson Coniconde appeals from the district court's order denying that he be given credit for his driver's license suspension while he is incarcerated.

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

A grand jury indicted Coniconde for felony eluding and felony obstructing a railroad track. (R., pp. 35-37.) Pursuant to a plea agreement that also resolved a separate aggravated battery case, in this case Coniconde pled guilty to felony eluding and felony injuring railroad property. (R., pp. 87-91; Tr., p. 4, L. 5 – p. 6, L. 13; p. 14, L. 23 – p. 15, L. 15.) The district court sentenced Coniconde to concurrent terms of five years with two years determinate, and imposed an absolute driver's license suspension of three years. (R., pp. 98-100.) Coniconde filed a timely notice of appeal. (R., pp. 103-05.)

Coniconde also filed a motion to reconsider the three-year absolute driver's license suspension. (R., pp. 111-13.) Coniconde asked that his suspension begin on the date of judgment or, alternatively, that it be reduced. (Supp. Tr., p. 12, L. 2 – p. 13, L. 10.) The district court granted the alternative request in the motion, and reduced the suspension to 18 months. (Aug., pp. 1-2.)

## ISSUE

Coniconde states the issue on appeal as:

Did the district court err in ordering Mr. Coniconde's driver's license suspension commence upon his release from incarceration rather than upon his conviction?

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Coniconde failed to show any error because the Idaho Code requires that driver's license suspensions commence upon release from custody?

## ARGUMENT

### Coniconde Has Failed To Show Any Error Because The Idaho Code Requires That Driver's License Suspensions Commence Upon Release From Custody

#### A. Introduction

Coniconde contends that the district court lacked discretion to delay running his driver's license suspension until after his release from custody, but could only run the suspension from the entry of judgment. (Appellant's brief, pp. 5-10.) This argument is shown meritless by a review of the applicable statutes.

#### 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.

#### C. The Idaho Code Provides That A License Suspension Imposed Upon Conviction Of A Crime Begins Upon The Defendant's Release

"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).

Statutes dealing with the same subject matter must be construed together to give effect to both if possible. State v. Barnes, 133 Idaho 378, 380, 987 P.2d 290, 292 (1999). Nevertheless, if statutes are ultimately in conflict the more specific statute controls. In re City of Shelley, 151 Idaho 289, \_\_\_, 255 P.3d 1175, 1179-80 (2011) (citing Mulder v. Liberty Northwest Ins. Co., 135 Idaho 52, 57, 14 P.3d 372, 377 (2000)). “When a statute and rule can be reasonably interpreted so that there is no conflict between them, they should be so interpreted rather than interpreted in a way that results in a conflict.” State v. Two Jinn, Inc., 148 Idaho 706, 709, 228 P.3d 387, 390 (Ct. App. 2010) (citing State v. Johnson, 145 Idaho 970, 974, 188 P.3d 912, 916 (2008)).

The statutory punishment for felony eluding a police officer includes a mandatory absolute driver’s license suspension. I.C. § 49-1404. “Any person who has pled guilty or is found guilty of a felony violation of the provisions of this section, notwithstanding the form of the judgment or withheld judgment, shall have his driving privileges suspended by the court for a minimum of one (1) year, which may extend to three (3) years, at the discretion of the court, during which time he shall have absolutely no driving privileges of any kind.” I.C. § 49-1404(3). The Idaho Code also requires: “No time credit against the court-ordered period of suspension will be given while the individual is incarcerated or if the individual is reincarcerated. The entire period of the court-ordered suspension must run after the individual is released from confinement or imprisonment.” I.C. § 49-326A(3). Far from requiring that the driver’s license suspension run during the period of incarceration, the Idaho Code requires that it run only after release from incarceration.

Coniconde argues that the suspension must run from the “entry of the judgment of conviction” because “no other date is referenced” in I.C. § 49-1404(3). (Appellant’s brief, p. 6.) However, there is no language in I.C. § 49-1404(3) regarding when the suspension commences or runs. One must look to I.C. § 49-326A(3) for language of when a driver’s license suspension runs, and that statute contains, in plain language, the legislative intent that the suspension run when the defendant is released from incarceration and not while the defendant is incarcerated.

Coniconde’s argument that the district court was required to order that he not drive while incarcerated is meritless. To the contrary, the Idaho Code provides that no credit for court-ordered suspensions is to be given while the defendant is incarcerated.

#### CONCLUSION

The state respectfully requests this Court to affirm the district court’s order on the Rule 35 motion.

DATED this 30th day of May, 2019.

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



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 30th 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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KKJ/ah