State v. Burke Appellant's Brief Dckt. 46841

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

STATE OF IDAHO,	)	
	)	**NO. 46841-2019**
Plaintiff-Respondent,	)	
	)	**KOOTENAI COUNTY**
v.	)	**NO. CR-2018-3403**
	)	
JAMES DAVID BURKE,	)	**APPELLANT'S BRIEF**
	)	
Defendant-Appellant.	)	
	)	

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

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STATEMENT OF THE CASE

Nature of the Case

The question before this Court is whether a defendant is entitled to credit for time served during his court-ordered commitment to State custody to restore his competency for the criminal case against him. The answer is yes; court-ordered commitment to State custody is prejudgment incarceration for the offense for which the judgment is entered. It is "incarceration" because the defendant is involuntarily confined in State custody and unable to terminate the confinement. Moreover, it is "for the offense" because the offense provides the basis for the incarceration. As such, the district court in this case erred when it denied Mr. Burke's motion for credit for fifty-six days in the State Hospital, ordered by the district court, to restore his competency for sentencing. Mr. Burke respectfully requests this Court reverse the district court's order denying him credit for time served.

Statement of Facts and Course of Proceedings

On February 7, 2018, Mr. Burke reported a welfare check on himself because he needed to talk to the police and go to the hospital. (Conf. Exs., pp.13, 34.) During the police's contact with him, they discovered he was not living at the address he was registered at, as required by the sex offender registration statutes. (Conf. Exs., pp.13, 34.) Mr. Burke said he did not live there anymore "because he had to fight a demon that had an atomic bomb." (Conf. Exs., pp.13, 34.) The police took him to the crisis center and told him to update his address upon his release. (Conf. Exs., p.13.)

On March 1, 2018, the State filed a criminal complaint alleging Mr. Burke failed to notify of his address change. (R., pp.9–10.) Mr. Burke was arrested for this offense on the day prior, February 28. (R., p.12.) In the complaint, the State also alleged he was a persistent violator of the law. (R., pp.9–10.) Mr. Burke remained in custody. (*See* R., pp.21, 22, 25.)

On March 26, 2018, Mr. Burke moved for a mental health evaluation pursuant to I.C. §§ 18-210 and -211 to determine his capacity to understand the proceedings and assist with his defense. (R., pp.26–27.) The magistrate ordered an evaluation. (R., pp.28–29, 32–33.) The evaluator determined Mr. Burke suffered from a serious mental illness, but was fit to proceed. (Conf. Exs., pp.1–8.) The evaluator provided an addendum, however, opining that Mr. Burke was gravely disabled as a direct result on his mental illness, as defined by Title 66, Chapter 3 (hospitalization of mentally ill). (Conf. Exs., pp.9–10.) Consequently, the magistrate civilly committed Mr. Burke on May 11, 2018, and he was discharged on May 14, 2018. (R., pp.34–36, 37, 38, 39–41, 115.) Mr. Burke remained in custody after his discharge. (R., pp.37, 38, 39–41.)

On June 1, 2018, Mr. Burke waived his preliminary hearing and was bound over to district court. (R., pp.39–41, 42.) The State charged him with failure to notify and the persistent violator enhancement. (R., pp.43–44.) On June 8, 2018, the magistrate entered an order, based on the prior evaluation, that Mr. Burke was fit to proceed pursuant to I.C. §§ 18-210 and -211. (R., p.45.) In the order, the magistrate recognized Mr. Burke's civil commitment had been terminated. (R., p.45.)

On June 12, 2018, Mr. Burke pled guilty to failure to notify. (R., pp.46–47.) The State agreed to dismiss the persistent violator enhancement. (R., p.50.) The district court released Mr. Burke on his own recognizance. (R., pp.46–47, 49.)

On August 22, 2018, at time set for sentencing, the district court ordered another evaluation pursuant to I.C. §§ 18-210 and -211 (R., pp.51, 52–53, 54–55.) Upon the parties' stipulation, the district court rescinded its prior order deeming Mr. Burke fit to proceed.

(R., pp.56–57, 58.) Mr. Burke was evaluated, and the evaluator determined Mr. Burke was incompetent and therefore unfit to proceed. (Conf. Exs., pp.50–59.) On October 18, 2018, the district court ordered for Mr. Burke to be committed to the custody of the director of the Idaho Department of Health and Welfare ("IDHW"). (R., pp.65–66, 67–68.) At the hearing on Mr. Burke's commitment, Mr. Burke objected to his commitment to IDHW custody. (*See generally* Tr. Vol. I,[1] p.6, L.23–p.9, L.24.)

On October 23, 2018, IDHW notified the district court and the parties of Mr. Burke's placement in the State Hospital. (Conf. Exs., p.60.) The district court issued an amended commitment order on October 26, 2018. (R., pp.75–76.)

On December 11, 2018, IDHW recommended to the district court that Mr. Burke was no longer unfit to proceed. (Conf. Exs., pp.61–66.) On December 17, 2018, the district court ordered Mr. Burke's commitment to IDHW terminated and further ordered IDHW to transport him to the Kootenai County Jail. (R., p.78.) On the same day, the district court ordered Mr. Burke released on his own recognizance from the Kootenai County Sheriff's custody. (R., p.80.)

On December 21, 2018, the district court sentenced Mr. Burke. (R., pp.82–83.) He was not in custody. (R., p.82.) The district court placed him on probation for two years, with an underlying sentence of five years, with two years fixed. (R., pp.83, 86–88; Tr. Vol. III, p.13, Ls.10–19.) At the end of the hearing, Mr. Burke requested the district court include "the time that he was taken in for the commitment" as credit for time served. (Tr. Vol. III, p.21, Ls.17–24.)

[1] There are three transcripts on appeal contained in one PDF document. Each transcript will be cited with reference to its internal pagination. The first, cited as Volume I, contains the commitment hearing, held October 18, 2018. (On page 5, lines 1–2 of the transcript erroneously contains the date December 21, 2018.) The second, cited as Volume II, contains a bond motion hearing, held on October 26, 2018. The third, cited as Volume III, contains the sentencing hearing, held on December 21, 2018.

Specifically, he argued for credit for his time in the State Hospital. (Tr. Vol. III, p.22, Ls.4–22.) The State did not object, but did not know if it was "legally" correct. (Tr. Vol. III, p.22, L.23–p.23, L.6.) The district court ordered briefing on the matter. (Tr. Vol. III, p.23, Ls.9–12.)

The State then filed a brief in opposition for credit for time served. (R., pp.93–98.) Mr. Burke filed a brief in support. (R., pp.100–13.) Mr. Burke calculated the following days of credit:

- 106 days: February 28, 2018 (arrest) to June 14, 2018 (release after guilty plea), including May 11 (civil commitment order) to May 14 (civil commitment discharge)

- 56 days: October 22, 2018 (criminal commitment order) to December 17, 2018 (release after criminal commitment)

(R., p.101.) This is a total of 162 days.[2] (R., p.101.) Mr. Burke's argument focused only on the fifty-six days of the district court's commitment to IDHW custody and confinement to the State Hospital. (R., pp.101–13.) The district court issued a memorandum decision and order denying Mr. Burke's motion for credit. (R., pp.114–22.) Mr. Burke timely appealed. (R., pp.123–26.)

[2] In Mr. Burke's calculations, he did not include the end date. If the end date is included, February 28, 2018, to June 14, 2018, is 107 days, and October 22, 2018, to December 17, 2018, is 57 days. This is a total of 164 days.

ISSUE

Did the district court err when it denied Mr. Burke's motion for credit for time served for his court-ordered commitment to State custody to restore his competency for sentencing?

ARGUMENT

The District Court Erred When It Denied Mr. Burke's Motion For Credit For Time Served For His Court-Ordered Commitment To State Custody To Restore His Competency For Sentencing

A. Introduction

Mr. Burke argues the district court erred by denying his motion for credit for time served because he was incarcerated for the offense when the district court committed him to State custody for his mental condition. First, Mr. Burke was incarcerated because he was involuntarily confined by court order to the State Hospital. He had no ability to refuse the commitment or end the State's custody over him. Second, this incarceration was for the offense because the offense was the basis for his incarceration. But for the offense, and the attendant statutory requirement for Mr. Burke to be competent in the criminal proceedings against him, he would not have been incarcerated. Therefore, Mr. Burke should have received fifty-six days of credit for his court-ordered commitment to State custody.

B. Standard Of Review

The Court exercises "free review over statutory interpretation because it is a question of law." *State v. Owens*, 158 Idaho 1, 3 (2015).

C. The District Court Should Have Granted Mr. Burke's Motion For Credit For Time Served Because Mr. Burke Was "Incarcerated" "For The Offense" During His Court-Ordered Commitment To State Custody To Restore His Fitness To Proceed With Sentencing

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 statute "mandates that a court gives a defendant credit for his time served because the statute states that a person 'shall' receive credit." *Owens*, 158 Idaho at 4.

At issue here is the interpretation and application of two terms in I.C. § 18-309: "incarceration" and "for the offense." This Court has interpreted the latter, but not the former. Nonetheless, this Court has held the language of I.C. § 18-309 is unambiguous, *Owens*, 158 Idaho at 4–6, and its plain meaning mandates credit for court-ordered commitment to State custody for a defendant unfit to proceed with the criminal charges against him. This constitutes "incarceration" "for the offense" pursuant to the statute.

1. <u>Court-ordered commitment to State custody is "incarceration" because it is mandatory, controlled confinement with no ability to leave</u>

"Statutory interpretation begins with the statute's plain language. That language is to be given its plain, obvious and rational meaning. If that language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction." *State v. Brand*, 162 Idaho 189, 191 (2017) (citations and internal quotation marks omitted). Here, "incarceration" is not defined in I.C. § 18-309 or the general definitions outlined in Title 18. *See* I.C. §§ 18-101A, -309. "To ascertain the ordinary meaning of an undefined term in a statute, [this Court has] often turned to dictionary definitions of the term." *Marek v. Hecla, Ltd.*, 161 Idaho 211, 216 (2016) (quoting *Arnold v. City of Stanley*, 158 Idaho 218, 221 (2015)).

The dictionary definitions for "incarceration" are instructive on the term's meaning. Black's Law Dictionary defines "incarceration" as "the act or process of confining someone" and "imprisonment." *Incarceration*, BLACK'S LAW DICTIONARY (10th ed. 2014). "Confinement," in turn, is defined as "[t]he act of imprisoning or restraining someone; the quality, state, or condition of being imprisoned or restrained." *Confinement*, BLACK'S LAW DICTIONARY. Further, Black's Law Dictionary defines "imprisonment" as: "1. The act of confining a person, esp. in a prison . . . 2. The quality, state, or condition of being confined . . . 3. The period during which a person is not at liberty . . . ." *Imprisonment*, BLACK'S LAW DICTIONARY. Similarly, "imprison" means "[t]o put into prison; to jail; incarcerate" and "[t]o keep (a person) somewhere so that the person is not at liberty, while preventing any departure." *Imprison*, BLACK'S LAW DICTIONARY. Along the same lines, Webster's defines "incarceration" as "a confining or state of being confined." *Incarceration*, WEBSTER'S THIRD NEW INT'L DICTIONARY 1141 (2002).

As evidenced by these definitions, the meaning of "incarceration" focuses on act of confinement, not the facility of confinement. In other words, the degree of confinement matters, the location does not. Although confinement to a prison or jail would suffice as incarceration, those are not the exclusive means. Rather, incarceration denotes restrictions on freedom of movement and personal liberty, regardless of the place of that confinement. It also denotes an inability of the person confined to control the conditions of or terminate his confinement As such, the plain meaning of incarceration is confinement initiated, controlled, and terminated by the State or court order.

If this Court holds "incarceration" is ambiguous, there is legislative and policy support for Mr. Burke's interpretation of incarceration. First, the legislature allows credit for time served for treatment of a defendant's mental condition *after* sentencing. Idaho Code § 18-207 states:

> If by the provisions of [I.C. § 19-2523],[3] the court finds that one convicted of crime suffers from any mental condition requiring treatment, such person shall be committed to the board of correction *or such city or county official as provided by law for placement in an appropriate facility for treatment, having regard for such conditions of security as the case may require*. In the event a sentence of

[3] This statute requires the district court to consider the defendant's mental condition if it "is a significant factor" and authorize treatment if appropriate. I.C. § 19-2523.

> incarceration has been imposed, the defendant shall receive treatment in a facility which provides for incarceration or less restrictive confinement. In the event that a course of treatment thus commenced shall be concluded prior to the expiration of the sentence imposed, the offender shall remain liable for the remainder of such sentence, *but shall have credit for time incarcerated for treatment.*

I.C. § 18-207(2) (emphasis added). This statute requires the defendant to receive credit for his time served in a non-prison facility while receiving treatment for his mental health condition. The legislature's approval of credit in this circumstance indicates its intention to allow credit for time served during the mandatory, court-ordered treatment of a defendant's mental health condition prejudgment. Second, the American Bar Association ("ABA") recommends credit for time served for a defendant committed to restore competency: "A defendant who has been detained or committed for examination of competence to proceed or treatment to restore competence to proceed should receive credit against any sentence ultimately imposed for the time of such pretrial confinement." *ABA Criminal Justice Standards on Mental Health* 7-4.16 (4th ed. 2016). The legislature's intent to give credit for mental health treatment post-sentencing and the ABA's policy supports an interpretation of "incarceration" that includes court-ordered commitments to restore a defendant's competency.

Applying this interpretation (whether ambiguous or not), the district court's order of commitment to state custody qualifies as "incarceration." Pursuant to I.C. § 18-212(2), if the district court determines the defendant "lacks fitness to proceed," the district court "*shall* commit him to the custody of the director" of IDHW "for a period not exceeding ninety (90) days, for care and treatment at an appropriate facility of the department of health and welfare . . . ." I.C. § 18-212(2) (emphasis added). This commitment is mandatory, as established by the "shall" language. In addition, the county sheriff "shall" transport the defendant to and from the designated facility. I.C. § 18-212(2). Next, upon the commitment, the defendant must comply with the State's treatment. If the defendant refuses treatment, the district court "shall" conduct a hearing and has the authority to order "involuntary treatment" or "other terms and conditions." I.C. § 18-212(3). Once the district court orders the commitment, the sole power to terminate the commitment rests with the district court. After the commitment, the district court receives progress reports on the defendant's fitness to proceed. I.C. § 18-212(2), (4). If the district court determines the defendant is fit to proceed, the criminal proceedings against the defendant must resume. I.C. § 18-212(4). If, after the initial ninety days, the progress report indicates the defendant is not currently fit to proceed but probably will be in the future, the district court is authorized to continue its commitment for another 180 days. I.C. § 18-212(2), (4). After that, if the defendant remains unfit, the district court must commence involuntary commitment proceedings. I.C. § 18-212(4). Pursuant to these statutes, the defendant's commitment rises and falls with the district court's determination of his fitness to proceed. The defendant is not free to reject or end the commitment on his own accord.

Finally, beyond the district court's immense control over the commitment, the commitment statute itself refers to "place of confinement," "custody," and "escape"—terms that signify incarceration.

> If a defendant *escapes from custody during his confinement*, the director shall immediately notify the court from which committed, *the prosecuting attorney* and the sheriff of the county from which committed. The court shall forthwith issue an order authorizing any health officer, peace officer, or the director of the institution from which the defendant escaped, *to take the defendant into custody* and immediately return him to *his place of confinement*.

I.C. § 18-212(6) (emphasis added). This section further illustrates that the court-ordered commitment is a form of incarceration. First, it refers to the commitment and State custody as "confinement," which is consistent with the plain meaning of incarceration. Second, it refers to an escape from "custody," which again represents incarceration as well as control by the State. *Custody*, BLACK'S LAW DICTIONARY ("The care and control of a thing or person for inspection, preservation, or security."); *Physical custody*, BLACK'S LAW DICTIONARY ("Custody of a person (such as an arrestee) whose freedom is directly controlled and limited."). Finally, it refers to a defendant's unapproved departure from State custody and confinement as "escape," which shows the defendant has no control over his confinement or the independent ability to end State custody. Looking at this language in the commitment statute, along with the district court's commitment power, a commitment pursuant to I.C. § 18-212 constitutes "incarceration" for credit for time served purposes.

In sum, court-ordered commitment to State custody to restore competency contains all the hallmarks of incarceration. The defendant has no choice to reject the commitment and no option to end it. The commitment is mandatory. The defendant is transported by law enforcement. The State has complete custody, *i.e.*, care and control, over the defendant. The district court sets the commitment terms and evaluates the defendant's progress. The defendant is forced treatment if he refuses. The district court has the singular power not only to terminate the commitment, but also to extend it to the point of involuntary commitment. All of these factors lead to the conclusion that court-ordered commitment to State custody meets the definition of "incarceration" in I.C. § 18-309.

In light of this interpretation, Mr. Burke was subject to prejudgment incarceration when the district court ordered him to be committed to IDHW custody pursuant to I.C. § 18-212 for ninety days. (R., pp.67–68.) The district court ordered progress reports and to be notified if Mr. Burke refused treatment. (R., p.68.) The district court also ordered immediate notification if Mr. Burke escaped custody. (R., p.68.) Upon his commitment, Mr. Burke was confined to the State Hospital. (Conf. Exs., p.60.) He was required to engage in treatment and take medication. (Conf. Exs., p.65.) After fifty-six days, Mr. Burke was released to the Kootenai County Sheriff's custody. (R., p.78.) He was then released on his own recognizance. (R., p.80.) The district court's commitment of Mr. Burke constitutes incarceration pursuant to I.C. § 18-309.

2. <u>The Court of Appeals' interpretation of "incarceration" ignored I.C. § 18-309's plain language and therefore should be limited to its application to house arrest</u>

Although there are no decisions from this Court on the meaning of "incarceration," the Court of Appeals interpreted the term in *State v. Climer*, 127 Idaho 20 (1995), to determine whether house arrest was incarceration. *Climer* should be limited to its facts, and its interpretation of incarceration beyond its house arrest application should be abrogated or overruled as inconsistent with the plain language of I.C. § 18-309.

Climer considered whether a defendant on house arrest prior to trial was incarcerated and thus entitled to credit for time served. 120 Idaho at 21–24. The defendant was released from custody "on the condition that he remain at his residence and be monitored by an electronic device which would alert authorities if he left the residence without prior approval from the court." *Id.* at 21. During his house arrest, the court allowed the defendant to leave his residence to meet with his attorney and to attend his daughter's surgery. *Id.* After sentencing, the defendant moved for credit for time served during his house arrest. *Id.* The Court of Appeals affirmed the district court's denial of his motion for credit. *Id.* at 21–24.

Climer held, "pursuant to I.C. § 18-309, prejudgment 'house arrest' does not constitute 'incarceration.'" *Id.* at 24. In reaching this decision, the Court of Appeals engaged in statutory construction, but did not begin with the statute's plain language. *Id.* at 22–24. The Court of Appeals first turned to legislative history, which was "virtually nonexistent," and then relied on the interpretation of similar terms in other jurisdictions. *Id.* The Court of Appeals never considered the plain, obvious, and rational meaning or examined relevant dictionary definitions.

See id. Instead, the Court of Appeals was guided by other jurisdictions' interpretations of the terms "custody," "pretrial release," and "confinement." *Id.* at 23–24. After reviewing these authorities, the Court of Appeals stated, "We are persuaded that the State's position—incarceration means to confine in a prison or jail—should be adopted rather than the definition espoused by Climer that incarceration includes all restraints on personal liberty," such as "house arrest" and "home confinement." *Id.* at 23. "Based upon the rationale expressed by the weight of authority," the Court of Appeals concluded, "house arrest is more akin to probation than incarceration." *Id.* at 24.

Climer should be abrogated or overruled to the extent it provides a blanket interpretation of "incarceration" in I.C. § 18-309. "Stare decisis requires that th[e] Court follows controlling precedent unless that precedent is manifestly wrong, has proven over time to be unjust or unwise, or overruling that precedent is necessary to vindicate plain, obvious principles of law and remedy continued injustice." *Owens*, 158 Idaho at 4–5. *Climer*'s interpretation of "incarceration" is manifestly wrong because it did not consider the statute's plain language. *See Owens*, 158 Idaho at 4–6 (overruling a case because it "incorrectly looked at legislative intent" and "overlooked the statute's plain language"). The *Climer* Court went directly to legislative history and other jurisdictions without considering whether the statute was ambiguous. *See Owens*, 158 Idaho at 5 (overruling a case because it "erroneously relied on the statute's legislative purpose without finding the statute was ambiguous"). This is contrary to this Court's tenets of statutory construction. *See id.* at 4–6. As such, this Court should not rely on *Climer*'s interpretation of incarceration, and *Climer* should be limited to its holding that house arrest is not incarceration.

3. <u>Court-ordered commitment to State custody is "for the offense" because the offense is the basis of the incarceration</u>

Having established Mr. Burke's commitment to State custody was "incarceration," the second and final question is whether his incarceration was "for the offense." I.C. § 18-309(1). This Court's recent decisions in *Brand* and *Owens* provide guidance. These decisions establish that, because Mr. Burke's offense provided the basis for his incarceration, he was incarcerated "for the offense."

In *Brand* and *Owens*, this Court interpreted the "offense" language to determine whether a defendant was entitled to credit for his incarceration. In *Owens*, this Court held a defendant was entitled to credit on each consecutive sentence for eight offenses. 158 Idaho at 4. In *Brand*, this Court held a defendant was entitled to credit for an offense, even though he was also incarcerated for a prior, unrelated offense. 162 Idaho at 192–93. *Brand* outlined a two-part test for credit for time served. The first part requires incarceration, and the second part, relevant here, requires, "putting aside any alternative reason for the defendant's incarceration, the relevant offense must be one that provides a basis for the defendant's incarceration." *Id.* at 193. In short, I.C. § 18-309 "applies to all offenses that provide a basis for the defendant's incarceration." *Id.* at 192.

Here, Mr. Burke's incarceration meets the "basis" test. Idaho Code § 18-210 guarantees, "No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures." I.C. § 18-210. This statute requires a defendant to be competent throughout the criminal proceedings. If the district court has "reason to doubt the defendant's fitness to proceed," I.C. § 18-211(1), the district court may order an evaluation and, if necessary, commit the defendant to restore his competency. I.C. §§ 18-211 (evaluation), -212 (commitment). Moreover, the commitment's only purpose is to render the defendant fit to proceed with the criminal case. The commitment statutes have no provisions for the defendant's long-term rehabilitation or treatment. *See* I.C. §§ 18-211, -212. The focus is on restoring and maintaining the defendant's mental condition through the pendency of the criminal case.

These statutes establish Mr. Burke's offense was the basis for his incarceration. Mr. Burke was not civilly committed pursuant to Title 66, Chapter 3. He was committed pursuant to I.C. §§ 18-210, -211, and -212 to ensure his competency to proceed with sentencing for the offense. (*See* R., pp.51, 65–66.) He was confined to the State Hospital for "cognitive restoration." (Conf. Exs., p.62.). After his treatment, the evaluator recognized that, "[u]nfortunately," Mr. Burke still had lingering "psychiatric symptoms," but they did not "appreciably affect his ability to understand the judicial process or impede his ability to rationally understand court proceedings." (Conf. Exs., p.65.) His psychiatric symptoms were "remitted" so he was fit to proceed. (Conf. Exs., p.65.) The evaluator acknowledged just three "barriers to the judicial process": if Mr. Burke stops or modifies his medication, uses illegal drugs, or is placed in extended detention. (Conf. Exs., p.66.) There were no recommendations for additional treatment of his psychiatric symptoms. (*See* Conf. Exs., pp.61–66.) Accordingly, the charged offense, and the statutory mandate for Mr. Burke be competent for sentencing, provided the basis for his incarceration. Mr. Burke was therefore incarcerated "for the offense," as required by I.C. § 18-309.

4. <u>The district court erred by denying Mr. Burke credit for time served because his court-ordered commitment to State custody was "incarceration" "for the offense" under I.C. § 18-309's plain language</u>

As discussed above, Mr. Burke should have received credit for his commitment to State custody and resulting confinement in the State Hospital. This was "incarceration . . . for the offense . . . for which the judgment was entered." I.C. § 18-309(1). The district court erred by denying him credit. Similar to *Climer*, the district court also failed to consider I.C. § 18-309's plain language. (R., pp.117–21.) The district court relied on *Climer*'s definition and then examined other jurisdictions. (R., pp.117–21.) The district court ultimately concluded Mr. Burke's commitment was not incarceration. (*See* R., pp.117–21.) Mr. Burke maintains the district court's analysis, as in *Climer*, was in error because the district court did not begin with the plain meaning of "incarceration." The plain meaning is controlled confinement by the State without an independent ability to reject or terminate the confinement. Court-ordered commitment to State custody in a State hospital with mandatory treatment meets this definition. Therefore, Mr. Burke was entitled to credit for time served for his criminal commitment for this offense.

CONCLUSION

Mr. Burke respectfully requests this Court reverse the district court's memorandum decision and order denying his motion for credit for time served and remand this case with instructions to the district court to enter an order granting him fifty-six days of credit for his commitment.

DATED this 30th day of May, 2019.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JCS/eas