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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 Case No.**
v.	)	**CR-2018-3403**
	)	
JAMES DAVID BURKE,	)	
	)	
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 CYNTHIA K.C. MEYER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

James David Burke appeals from the district court's denial of his motion for credit for time served.

Statement Of The Facts And Course Of The Proceedings

In February of 2018, Burke called law enforcement "to report a welfare check" on himself. (R., p.15.) Burke told the responding officers that "he was having suicidal thoughts and wanting to hurt himself." (Id.) Burke also reported that he had recently changed addresses because "he had to move after fighting with a demon that had an atomic bomb," and Burke "won the fight and buried the bomb with dirt." (Id.) Burke, a sex offender, was "checked into [a] crisis center for a mental health evaluation"; but officers warned him that "the moment he was released" he would need to update his address "or he would be charged with failing to register." (Id.) Burke failed to update his address after he was released and was accordingly arrested. (Id., pp.17-18.)

The state filed a criminal complaint alleging one count of failure to notify an address change and additionally alleging a persistent violator enhancement. (Id., pp.9-10.) While in custody, Burke moved for "an examin[ation] and report" on his mental health "based on the provisions of Idaho Code sections 18-210 and 18-211." (Id., p.26.) The court-ordered evaluator ultimately concluded that Burke was "mentally ill" and "gravely disabled" (Id., pp.28-29; Conf. Ex., pp.9-10); consequently, the magistrate ordered a civil commitment (R., pp.34-38). After the commitment was terminated Burke remained in custody. (Id., p.39.)

After Burke waived a preliminary hearing, the state charged him with failure to notify an address change and a persistent violator enhancement. (Id., pp.41, 43-44.) The magistrate entered an order finding Burke "fit to proceed" and finding he could "assist his counsel." (Id., p.45.) Pursuant to a plea agreement, Burke pleaded guilty to failure to notify an address change and the state agreed to dismiss the persistent violator enhancement. (Id., pp.46, 50.) The district court released Burke on his own recognizance. (Id., p.49.)

On the day of sentencing the district court ordered an additional mental health evaluation under Idaho Code Section 18-210. (Id., pp.51-57.) Burke moved the district court to rescind its prior order finding him fit to proceed, to which the state had no objection, and which the court granted. (Id., pp.56-58.) Following the evaluation, the evaluator concluded that Burke was "incompetent, and therefore unfit to proceed with the legal process." (Conf. Ex., p.59.) The district court accordingly entered an order suspending the proceedings and committing Burke "to the custody of the Director of Idaho Department of Health and Welfare pursuant to Idaho Code § 18-212." (R., pp.67-68.) Burke ultimately spent approximately 56 days at the state hospital. (Id., pp.67, 74, 78, 80; Conf. Ex., p.60.)

After Burke's hospitalization, the Idaho Department of Health and Welfare notified the district court that it determined "that Mr. Burke is fit to proceed." (Conf. Ex., p.66.) Burke was sentenced to five years, with two years fixed, and placed on probation. (R., pp.86-92.) Towards the end of the sentencing hearing Burke asked for credit against his sentence for the time he was committed. (Id., p.83.) The parties briefed the issue, and Burke argued that "[f]or all intent and purposes, Mr. Burke was held in jail while in the custody of the Department of Health and Welfare." (Id., p.112.)

The district court disagreed. It noted that in a similar case the Idaho Court of Appeals "declined to grant credit for time served pretrial under 'house arrest,' or to expand the meaning of 'incarceration' under Idaho Code § 18-309 to include being under 'house arrest.'" (R., p.117 (citing State v. Climer, 127 Idaho 20, 896 P.2d 346 (Ct. App. 1995)).) By that same logic, the court concluded that Burke's "request for credit for commitment to a state mental hospital should be denied based on the plain language of Idaho Code § 18-309," because its definition of "incarceration" did not "include commitment to a mental hospital." (R., p.117.) The district court accordingly denied Burke's "request for credit for time served … because [Burke] was not 'incarcerated' under Idaho Code § 18-309." (R., p.122.)

Burke timely appealed. (R., pp.123-26.)

ISSUE

Burke states the issue on appeal as:

> 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?

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Burke failed to show that the district court erred in determining that the plain language of Idaho Code Section 18-309 referring to "incarceration" does not include court-ordered commitment?

ARGUMENT

The Plain Language Of Idaho Code Section 18-309, Referring To "Incarceration," Does Not Include Court-Ordered Commitment

A. Introduction

Burke argues on appeal that he should receive credit for time served, totaling 56[1] days, for his court-ordered commitment to the state hospital. Burke claims that the district court misinterpreted Idaho Code Section 18-309, and under the statutory language "incarceration" includes court-ordered commitments "because he was involuntarily confined by court order to the State Hospital" with no ability to refuse or end it. (Appellant's brief, p.6.)

Burke fails to show error. The district court concluded that, pursuant to State v. Climer, 127 Idaho 20, 896 P.2d 346 (Ct. App. 1995), Burke's motion for credit for time served should be denied because, "based on the plain language of Idaho Code § 18-309," "commitment to a state mental hospital" was not "incarceration." (R., p.117.) This was correct: by definition, "incarceration" is a reference to prison or jail. Thus, even if a court-ordered commitment to restore competency results in a confinement, and a deprivation of liberty, it is not incarceration. The district court therefore correctly denied Burke's motion for credit for time served.

[1] Below Burke claimed, without any discernible supporting argument, that he was additionally entitled to 106 days of credit for the time between his arrest and the discharge from his pre-plea commitment. (See R., p.101.) Burke, noting that his argument below "focused only on the fifty-six days" of his post-plea commitment, has abandoned any argument relating to the 106 days, and now only claims he should receive credit for 56 days. (Appellant's brief, pp.4-5.)

B. Standard Of Review

"The interpretation of a statute is an issue of law over which this Court exercises free review." Porter v. Bd. of Trustees, Preston Sch. Dist. No. 201, 141 Idaho 11, 13–14, 105 P.3d 671, 673–74 (2004) (citing Dyet v. McKinley, 139 Idaho 526, 528, 81 P.3d 1236, 1238 (2003)).

C. "Incarceration" Is A Plain Reference To Jail Or Prison; As Such, The District Court Correctly Determined That Burke Would Not Be Entitled To Credit For Time Served

Statutory interpretation "must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003) (citations omitted)). This Court has "consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." Id. (quoting City of Sun Valley v. Sun Valley Co., 123 Idaho 665, 667, 851 P.2d 961, 963 (1993)).

Computation of credit for time served is governed by Idaho Code Section 18-309(1), which reads 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.

The Idaho Court of Appeals has already concluded that "incarceration means to confine *in a prison or jail*." Climer, 127 Idaho at 23, 896 P.2d at 349 (emphasis added). And the unambiguous, plain meaning of "incarceration" supports this conclusion.

The root of "incarceration" is "carcer," a Latin term meaning "jail" or "prison." CARCER, BLACK'S LAW DICTIONARY (11th ed. 2019). That original meaning from Roman law persisted through 16th century England, where "carcer" likewise meant "[a] prison or jail." Id. The modern term "incarceration" "derives from this word" and continues to carry the limited meaning of "confinement in a jail or prison." Id.; INCARCERATION, Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/incarceration (last accessed August 19, 2019) (defining "incarceration" as "confinement in a jail or prison" and "the act of imprisoning someone or the state of being imprisoned"). The district court below therefore correctly applied Climer when it concluded that "incarceration" does not "include commitment to a mental hospital or house arrest," and that Burke's request "for credit for commitment to a state mental hospital should be denied based on the plain language of Idaho Code 18-309." (R., p.117.)

On appeal Burke fails to show any error. He argues[2] that "incarceration" includes court-ordered commitments because "the degree of confinement matters, the location does not." (Appellant's brief, p.8.) However, this definition cannot be correct in light of Climer, which squarely held that "incarceration means to confine in a prison or jail." Climer, 127 Idaho at 23, 896 P.2d 349. Nor does Burke's definition comport with the plain meaning of "carceral," which plainly presupposes a prison or jail.

And while Burke argues that Climer was "manifestly wrong," he does not come close to showing this is the case. (See Appellant's brief, p.13.) Burke simply argues that the Climer Court erroneously "went directly to legislative history and other jurisdictions without considering

[2] Burke raised a host of other claims below, such as claims that the district court was violating Burke's state and federal constitutional rights by denying credit for time served. (See, e.g., R., pp.101-02.) He abandons all of those claims on appeal and only claims the district court erred by misinterpreting Section 18-309. (Appellant's brief, pp.6-16.)

whether the statute was ambiguous." (Id.) Whether or not the court erred in its order of analysis, it is clear the court understood the importance of applying the statute's plain language before engaging in statutory construction. The Climer Court expressly pointed out that Idaho's "Supreme Court has consistently adhered to the primary canon of statutory construction that where the language of the statute is unambiguous, the clear expressed intent of the legislature must be given effect and there is no occasion for construction." 127 Idaho at 22–23, 896 P.2d at 348–49.

Moreover, it is clear that the Court of Appeals understood it was applying the plain definition of "incarceration" when it conducted its analysis. The Court explicitly rejected the appellant's entreaties to "redefin[e] the term incarceration to encompass the concept of house arrest" which it rightly found was "the responsibility of the legislature, not of this Court." Id. at 23, 896 P.2d at 49. And even if Burke has shown the Climer Court erred in its *application* of any canons of construction, Burke has not shown that the Climer Court's ultimate conclusion was incorrect. The Court of Appeals concluded that "incarceration means to confine in a prison or jail" and, as explained above, this comports with the plain definition of "incarceration." Id. Because Climer ultimately reached the correct result it cannot be manifestly wrong. See State v. Humphreys, 134 Idaho 657, 660, 8 P.3d 652, 655 (2000) (holding precedent will not be overruled "unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate the plain, obvious principles of law and remedy continued injustice"). Burke accordingly fails to show that Climer should be overruled, and fails to show that it does not control the outcome here.

Lastly, Burke's interpretation of "incarceration" sweeps so broadly that it is incapable of reasoned application. Burke concludes that "incarceration denotes restrictions of freedom of

movement and personal liberty, regardless of the place of that confinement." (Appellant's brief, p.8.) Under Burke's location-agnostic definition, *any* pretrial status would qualify as "incarceration"—insofar as every court ordered release necessarily implies some reduction of liberty and some degree of confinement. At the very least, Burke's expansive definition would include probation, as terms and conditions of probation will always include reductions of "personal liberty" that "confine" probationers. This cannot be correct; it is well settled that defendants are not entitled to credit for time served for time spent on probation. State v. Banks, 121 Idaho 608, 609, 826 P.2d 1320, 1321 (1992) ("a defendant is not entitled to credit for time served while on probation if s/he is not incarcerated, but at liberty"); Climer, 127 Idaho at 23, 896 P.2d at 349 ("it is well settled that a defendant is not entitled to credit against his or her sentence for time spent on probation, when sentence is pronounced or ordered into execution upon termination of probation"); State v. Sutton, 113 Idaho 832, 834, 748 P.2d 416, 418 (Ct. App. 1987) (defendant not entitled to credit for time spent on probation before probation was finally terminated); I.C. § 19-2603 ("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"). Thus, Burke's proposed redefinition of "incarceration"—beyond contradicting controlling authority and the plain language of the statute—is too broad to be coherently applied. In any event, Burke fails to show his definition is the plain one or that the district court erred by rejecting it.

Section 18-309 is unambiguous.[3] "[I]ncarceration means to confine in a prison or jail." Climer, 127 Idaho at 23, 896 P.2d at 349. Because Burke's court-ordered commitment took place in a hospital, and not in a prison or jail, he was not entitled to credit for time served under the plain language of Section 18-309. The district court, therefore, correctly denied Burke's motion for credit for time served.

CONCLUSION

The state respectfully requests this Court affirm the district court's order denying Burke's motion for credit for time served.

DATED this 22nd day of August, 2019.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

[3] Even if this court determines that Section 18-309 is ambiguous, "incarceration" should not be construed to include court-ordered commitments. While the district court did not conclude the statute was ambiguous or explicitly construe it, it did address both parties' citations to extra-jurisdictional authority. (See R., pp.117-21.) In particular, the district court noted the "persuasive" authority cited by the state and rejected the authority cited by the defendant. Should this Court conclude the statute is ambiguous, the state incorporates and relies on the district court's well-reasoned opinion, attached hereto as an appendix, and submits that even if construed, "incarceration" would not include court-ordered commitment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of August, 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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