

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 41935/41936

STATE OF IDAHO,)	2014 Unpublished Opinion No. 779
)	
Plaintiff-Respondent,)	Filed: October 22, 2014
)	
v.)	Stephen W. Kenyon, Clerk
)	
RANDY JAMES KRIEG,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Order denying Rule 35 request for credit for time served while on probation, affirmed.

Sara B. Thomas, State Appellate Public Defender; Spencer J. Hahn, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Ted S. Tollefson, Deputy Attorney General, Boise, for respondent.

Before LANSING, Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

In Docket No. 41935, Randy James Krieg pled guilty to injuring jails, Idaho Code § 18-7018. The district court sentenced Krieg to a unified term of five years with two years determinate. In Docket No. 41936, Krieg pled guilty to grand theft by unauthorized control, I.C. §§ 18-2403(3), 18-2407(1)(b). The district court sentenced Krieg to a unified term of ten years with two years determinate. The district court ordered the sentences in these two cases to run concurrent. The district court suspended the sentences and placed Krieg on probation. After Krieg violated his probation a third time, the district court revoked his probation and directed the underlying sentences be executed. Krieg filed an Idaho Criminal Rule 35 motion. At a hearing

on his Rule 35 motion, Krieg orally requested credit against his prison sentence for the time he spent on probation in each case. The district court denied his request. Krieg then filed a pro se motion again seeking credit for time served while on probation. The district court again denied his motion. Krieg appeals from the district court's order denying his successive Rule 35 motion and denying his request for credit for time served while on probation.

In his brief, Krieg acknowledges this Court's decision in *Taylor v. State*, 145 Idaho 866, 187 P.3d 1241 (Ct. App. 2008). In that case, this Court determined that a district court can only grant credit for time the defendant actually spent incarcerated. *Id.* at 870, 187 P.3d at 1245. Therefore, the district court's denial of Krieg's Rule 35 motion for credit for time served while on probation is affirmed.