

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47430

STATE OF IDAHO,)
) **Filed: July 16, 2020**
 Plaintiff-Respondent,)
) **Melanie Gagnepain, Clerk**
 v.)
) **THIS IS AN UNPUBLISHED**
 ALEXANDER BETHEL EVANS,) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
 Defendant-Appellant.)
)
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Lynn G. Norton, District Judge.

Order denying motion for credit for time served, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before HUSKEY, Chief Judge; GRATTON, Judge;
and LORELLO, Judge

PER CURIAM

Alexander Bethel Evans appeals from the district court's order denying his motion for credit for time served. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Evans, an inmate serving a sentence in an Idaho correctional facility, was involved in an altercation with another inmate. On January 9, 2014, Evans was served with an arrest warrant for aggravated battery as a result of the altercation. Evans remained incarcerated, pled guilty to the offense, and was sentenced on April 17, 2014. The district court granted Evans credit for the

ninety-nine days he served between receiving the warrant and sentencing. Five years later, Evans filed a motion for credit for time served, seeking “about 9 months and 14 days” of additional credit for time he served with reduced prison privileges between the date of the offense and service of the arrest warrant. The district court denied Evan’s motion. Evans appeals.

II.

STANDARD OF REVIEW

Whether a sentencing court has properly awarded credit for time served is a question of law subject to free review. *State v. Taylor*, 160 Idaho 381, 384-85, 373 P.3d 699, 702-03 (2016); *State v. Vasquez*, 142 Idaho 67, 68, 112 P.3d 1167, 1168 (Ct. App. 2005). We defer to the trial court’s findings of fact unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous. *State v. Covert*, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006).

III.

ANALYSIS

Mindful that the denial of his motion for credit for time served is consistent with applicable law, Evans argues that the district court erred by failing to grant him credit for time he served between the date he committed the aggravated battery at issue in this case and service of the arrest warrant for the offense. The State responds that the district court correctly concluded that Evans is not entitled to additional credit. We hold that Evans has failed to show that the district court erred in calculating his credit for time served.

Idaho Code Section 18-309 governs the calculation of credit for time served. When Evans was sentenced, I.C. § 18-309(1) provided, in pertinent 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.[¹]

¹ In 2015, the legislature amended I.C. § 18-309. The amendment deleted a comma after the word “entered” in the statutory language quoted above and added a new subsection to the statute that applies to cases involving a withheld judgment or suspended sentence. Evans does not argue that the amendment of I.C. § 18-309 affects the amount of credit he should receive.

According to the express statutory language, credit for time served is granted for any period of incarceration prior to sentencing if the incarceration was for the offense or an included the offense for which judgment was entered. The Idaho Supreme Court has interpreted I.C. § 18-309 as applying “to all offenses that provide a basis for the defendant’s incarceration.” *State v. Brand*, 162 Idaho 189, 192, 395 P.3d 809, 812 (2017). When considering whether to grant credit for time served under I.C. § 18-309, trial courts apply a two-prong test: (1) the defendant must have been incarcerated during the intervening period from service of the arrest warrant to entry of judgment; and (2) the relevant offense must be one that provides a basis for the defendant’s incarceration. *Brand*, 162 Idaho at 192-93, 395 P.3d at 812-13. Thus, if an incarcerated defendant is served with a warrant for an unrelated offense, the defendant will accrue credit against a sentence on the unrelated offense for continued incarceration following the warrant’s service. *See id.*

The district court concluded that Evans was entitled to credit for his incarceration between the date he was served with the arrest warrant for aggravated battery and his sentencing for that offense. The district court found that Evans was served with the arrest warrant on January 9, 2014, and remained incarcerated until he was sentenced on that offense on April 17, 2014. Consequently, the district court granted Evans credit for ninety-nine days served.

Evans does not challenge the district court’s calculation of the ninety-nine days of credit he received. Instead, Evans argues that he is entitled to “about 9 months and 14 days” of additional credit for time served from the date he committed the aggravated battery until he was served with the arrest warrant because he was removed from the general prison population and lost privileges during that time as a result of the altercation. Evans’s claim is inconsistent with the plain language of I.C. § 18-309 and *Brand*. Regardless of any prison discipline Evans may have received for committing aggravated battery on another inmate, Evans was not incarcerated for that offense for purposes of I.C. § 18-309 until service of the arrest warrant. Thus, Evans has not shown that the district court erred by denying his motion for credit for time served.

IV.

CONCLUSION

The district court did not err in its calculation of Evans’s credit for time served. Consequently, the district court’s order denying Evans’s motion for credit for time served is affirmed.