

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48181

STATE OF IDAHO,)
) Filed: September 9, 2021
Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
v.)
) THIS IS AN UNPUBLISHED
DWAYNE CHARLES CHRISTIANSEN,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Dane H. Watkins, Jr., District Judge.

Order denying motion for credit for time served, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Andrea W. Reynolds, Deputy Appellate Public Defender, Boise, for appellant.

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

BRAILSFORD, Judge

Dwayne Charles Christiansen appeals from the district court's order denying his motion for credit for time served under Idaho Criminal Rule 35(c). We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

In this case, the State charged Christiansen with trafficking in methamphetamine, and he was arrested on that charge in March 2019. The day after his arrest, Christiansen posted bond. While Christiansen was released on bond, the State charged him in a separate case with intimidating a witness, and he was arrested on that charge on August 6, 2019. At that time, the district court did not revoke Christiansen's bond in this case. Then, in January 2020, the court sentenced Christiansen in yet another case for a possession conviction. The court did not revoke Christiansen's bond in this case at that time either. Christiansen then proceeded to a jury trial in

this case on March 9, 2020. On that day, the court revoked Christiansen's bond for the trafficking charge.

A jury convicted Christiansen on the trafficking charge, and the district court held a sentencing hearing on March 20, 2020. At that hearing, the prosecutor acknowledged that although Christiansen is not legally entitled to credit for time served, he had served time for which he was not getting credit because he had declined the court's offer to revoke his bond on the trafficking charge in lieu of seeking a bond on the witness intimidation charge. Further, the prosecutor noted that when the court sentenced Christiansen in January 2020 on the possession conviction, the court "invited [Christiansen to] be booked on this case, and counsel didn't do anything about that again. I don't think that's fair to [Christiansen]." After acknowledging these facts, the prosecutor made the following sentencing recommendation:

So the State's recommendation is the five years, but I'm going to ask the Court to reduce that by six months for the time that [Christiansen] should have been getting credit on these cases had counsel gone and done what the Court was suggesting and allowed [Christiansen] to be booked so that he would be able to earn credit for time served . . . on this case, this trafficking case.

Thereafter, the district court imposed a unified sentence of ten years with three and one-half years fixed and stated that "this Court, in contemplating the fixed time, will be giving [Christiansen] credit for when this conviction occurred and the Court took [Christiansen] in custody on that matter. So that's the answer to the question [about] credit."

Christiansen filed a motion under Rule 35(c)¹ "seeking a reduction in sentence on equitable grounds" and requesting credit for 224 days for time served on the witness intimidation charge. Alternatively, Christiansen requested credit for 120 days of time served in the possession case. The district court held a hearing on the motion; the State opposed it; and the court denied it, stating that Christiansen's position "overlooks the underlying sentence of three and a half years fixed, believing that that six months wasn't considered by the Court, when, in fact, it was." Christiansen timely appeals this denial.

¹ Christiansen also stated he was bringing his motion under I.C.R. 47. Rule 47, however, does not provide for substantive relief but, rather, generally governs the procedure for filing a motion.

II. ANALYSIS

Although Christiansen acknowledges the district court's denial of his Rule 35(c) motion for credit for time served was correct under Idaho Code § 18-309(1) and *State v. Brand*, 162 Idaho 189, 192, 395 P.3d 809, 812 (2017), Christiansen challenges the denial, arguing the “district court abused its discretion considering the equities” and should have granted the motion “in the interests of justice.” Whether a sentencing court has properly awarded credit for time served is a question of law subject to free review. *State v. Gonzalez*, 165 Idaho 95, 97, 439 P.3d 1267, 1269 (2019).

Idaho Code § 18-309(1) governs credit for time served and provides 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 language of I.C. § 18-309 is mandatory and requires the sentencing court to give the appropriate credit for prejudgment incarceration when sentencing a defendant or pursuant to a Rule 35(c) motion for credit for time served. *State v. Moore*, 156 Idaho 17, 20-21, 319 P.3d 501, 504-05 (Ct. App. 2014).

Under I.C. § 18-309, a defendant is entitled to credit for time served as long as the prejudgment incarceration was for the offense for which the defendant was convicted and sentenced. *Brand*, 162 Idaho at 192, 395 P.3d at 812. A two-pronged test, if satisfied, mandates credit for time served under I.C. § 18-309:

[F]irst, the defendant must have been incarcerated during the intervening period from when the arrest warrant was served and the judgment of conviction was entered; and second, 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.

Brand, 162 Idaho at 192-93, 395 P.3d at 812-13.

Christiansen fails to satisfy the test's second prong requiring the period of incarceration to relate to the offense at issue. Because Christiansen's bond in this case was not revoked until trial, his incarceration from August 6, 2019, until March 20, 2020, did not relate to the trafficking charge. Rather, during that period, Christiansen was incarcerated on a witness intimidation charge and also for his sentence on a possession conviction. As Christiansen concedes, the district court did not err as a matter of law by denying his motion. Further,

Christiansen fails to provide any authority to support his assertion that the court abused its discretion by failing to consider “the equities in the case” and by failing to grant his motion “in the interests of justice.” A party waives an issue on appeal if either authority or argument is lacking. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Moreover, the record shows that prior to Christiansen’s Rule 35(c) motion, the court had already taken into consideration the time during which Christiansen was incarcerated before the judgment in this case and exercised its discretion in sentencing Christiansen to give him credit for six months to which he would not have been entitled under I.C. § 18-309.

III.

CONCLUSION

The district court did not abuse its discretion in denying Christiansen’s Rule 35(c) motion for credit for time served. Accordingly, we affirm the district court’s denial of that motion.

Judge GRATTON and Judge LORELLO **CONCUR.**