SUMMARY STATEMENT

State v. Jeremy Brown

Docket No. 43916

Jeremy Brown was charged with one count of aggravated battery while incarcerated on an unrelated offense. Brown pled guilty and was sentenced to a unified term of six years, with a minimum period of confinement of two years, with fifty-five days of credit for the time served between the time Brown's bond was set on the aggravated battery charge and the time of his sentencing. Brown did not appeal his judgment of conviction. Seven years later, Brown filed an Idaho Criminal Rule 35 motion for additional credit for time served, representing the time from his arrest and his sentencing on the aggravated battery charge, which the district court denied and withdrew the previously awarded fifty-five days. Pending Brown's appeal, the Idaho Supreme Court reinterpreted Idaho Code § 18-309 in *State v. Brand*, 162 Idaho 189, 395 P.3d 809 (2017).

On appeal, Brown challenged the denial of his Rule 35 motion and withdrawal of credit for time served because *Brand* dictated that he be awarded the additional time even though he was incarcerated during that period for an unrelated offense. The Court of Appeals held that *Brand* did not apply to Brown's case. Since Idaho Code § 18-309 had not previously been interpreted to result in the addition of credit for time served while incarcerated for an unrelated offense, *Brand* articulated a new rule. New interpretations of criminal procedural rules do not apply retroactively to cases not on direct appeal unless the rule substantially alters punishable conduct or the rule implicates the fundamental fairness of the trial. The rule articulated in *Brand* does not fall within either of these exceptions because Idaho Code § 18-309 only applies after the court determines the person has committed punishable conduct and after the defendant receives a fair plea, trial, and sentencing. Since Brown's appeal was from the denial of his Rule 35 motion and not from his judgment of conviction, *Brand* was inapplicable to Brown's case.