

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38236

STATE OF IDAHO,)	2011 Unpublished Opinion No. 669
)	
Plaintiff-Respondent,)	Filed: October 20, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
KEVIN L. FARNSWORTH,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. David C. Nye, District Judge.

Order denying I.C.R. 35 motion for credit for time served, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Judge; GUTIERREZ, Judge;
and MELANSON, Judge

PER CURIAM

Kevin L. Farnsworth pled guilty to an amended charge of sexual abuse of a child under sixteen. I.C. § 18-1508. In exchange for his guilty plea, additional charges were dismissed. The district court sentenced Farnsworth to a unified term of twelve years, with a minimum period of confinement of four years, but retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Farnsworth’s sentence and placed him on probation. One of Farnsworth’s conditions of probation included ninety days of discretionary time. Farnsworth violated the terms of his probation, and the district court revoked probation ordered a second period of retained jurisdiction. Farnsworth was thereafter placed on probation and given an additional ninety days of discretionary jail time. Farnsworth again violated the terms of his probation, and the district court ordered execution of his sentence. Farnsworth filed an I.C.R 35

motion for credit for time served, which the district court denied. Farnsworth appeals, arguing that the district court erred in not granting him credit for the discretionary jail time he served as a condition of his probation.

Idaho Code Section 18-309 provides:

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 remainder of the term commences upon the pronouncement of sentence and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

The Idaho appellate courts have interpreted the language of I.C. § 18-309 and have concluded that a defendant is not entitled to credit for time served as a condition of probation. Therefore, the district court did not err in denying Farnsworth's motion. *See State v. Dana*, 137 Idaho 6, 43 P.3d 765 (2002) (deciding that, when defendant serves jail time as condition of probation, there is no entitlement to credit for time served); *State v. Banks*, 121 Idaho 608, 826 P.2d 1320 (1992) (concluding that defendant's agreement to serve jail time to receive probation is a condition of that probation and there is no entitlement to receive credit for time served); *State v. Hale*, 116 Idaho 763, 779 P.2d 438, (Ct. App. 1989) (holding that defendant is only entitled to credit for time spent in jail on a related offense); *State v. Sutton*, 113 Idaho 832, 748 P.2d 416 (Ct. App. 1987) (holding defendant not entitled to credit against sentence for the time transpiring while was on probation on a suspended sentence).

Therefore, the district court's order denying Farnsworth's Rule 35 for credit for time served motion is affirmed.