

FILED _____

AT _____ O'Clock _____ M
CLERK OF THE DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)
)
) Plaintiff,)
vs.)
)
JUSTIN TYLER SAVELL)
)
) DOB: 09/14/1990)
) SSN: XXX-XX-2082)
) IDOC: 116542)
)
) Defendant.)
_____)

Case No. **CRF 2015 4522**

**AMENDED
I.C.R. 35 ORDER CONFIRMING
CREDIT FOR TIME SERVED AND
GRANTING ADDITIONAL CREDIT
FOR TIME SERVED AND
NOTICE OF RIGHT TO APPEAL**

This Amended I.C.R. 35 Order Confirming Credit for Time Served corrects one portion of the original I.C.R. 35 Order Confirming Credit for Time Served, filed on December 16, 2016. That order, errantly, did not give Defendant Justin Tyler Savell credit for time served on probation AFTER the changes to I.C. § 18-309(2) became effective on July 1, 2015. This error was noted by the Court when the Court read Savell's Appellant's Brief, filed by State Appellate Public Defender on April 24, 2017, in Supreme Court Docket No. 44578.

On December 14, 2016, Savell filed a motion requesting credit for time served for three separate time periods. Savell also requested a hearing, but has not noticed the matter up for hearing. The Court finds a hearing is not necessary.

The Court has made another review of the file and finds that Savell has already been given credit for time served in the amount of 12 days at the time of the original judgment on September 9, 2015, and an additional 134 days from April 26, 2016 to

September 7, 2016. Thus, Savell is asking credit for time served for which he has already been given credit. To that extent only, original calculations by the Court were correct.

The third time period is for “139 [days] served as a term of his probation from September 9, 2015 till January 26, 2016.” Motion for Credit for Time Served, p. 1. The Court specifically found in its December 16, 2016, I.C.R. 35 Order Confirming Credit for Time Served, that Savell was not entitled to credit for time served as a term of his probation, citing *State v. Jakoski*, 132 Idaho 67, 68, 966 P.2d 663, 664 (Ct.App. 1998); *citing State v. Buys*, 129 Idaho 122, 125-127, 922 P.2d 419, 422-423, *citing State v. Banks*, 121 Idaho 608, 610, 826 P.2d 1320, 1322 (1992). That case law has been changed by the Idaho Legislature in Idaho Code § 18-309(2), effective July 15, 2015. Thus, the Court errantly refused that credit for time served in the amount of 139 days. To that extent, the Court’s prior order is rescinded.

The Court now gives defendant Justin Tyler Savell credit for an additional 139 days credit for time served as of September 7, 2016, when the Court imposed Savell’s prison sentence. At that time, the Court calculated 147 days credit for time served as of September 7, 2016. The correct calculation should be 286 days credit for time served as of September 7, 2016.

IT IS HEREBY ORDERED Savell’s Motion for Credit for Time Served filed on December 14, 2016, is DENIED as to 12 days at the time of the September 9, 2015 judgment and for an additional 134 days from April 26, 2016 to September 7, 2016, as credit was already given for those days.

IT IS FURTHER ORDERED Savell’s Motion for Credit for Time Served filed on December 14, 2016, is GRANTED as to the additional 139 days from September 9, 2015, to January 26, 2016. Savell is entitled to a total credit for time served as of September 7, 2016, in the amount of 286 days.

IT IS FURTHER ORDERED Savell's request for hearing on his Motion for Credit for Time Served is DENIED.

NOTICE OF RIGHT TO APPEAL

YOU ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

DATED this 25th day of April, 2017.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of April, 2017 a true and correct copy of the foregoing Order Confirming Credit For Time Served was mailed, postage prepaid, or sent by interoffice mail to:

Idaho Department of Correction
Records Division (certified copy)
[certified copy Faxed to (208) 327-7445]

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**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy