STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF THE DISTRICT COURT

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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. **KENDRA LYNNE GOODRICK**, *Defendant.*	Case No. **CRF 2003 26465** **CRF 2003 20026** **MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT'S MOTION FOR CREDIT FOR TIME SERVED**

Goodrick's Motion for Credit for Time Served, **GRANTED.**

Marty Raap, Dep. Prosecuting Attorney, lawyer for the State.

Val Siegel, Coeur d'Alene, lawyer for Goodrick.

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I. FACTUAL BACKGROUND.

In each of her separate cases, Kendra Goodrick was sentenced to concurrent sentences on two counts of possession of a controlled substance with the intent to deliver. As a result of a probation violation, on June 14, 2005, this Court imposed two concurrent sentences of two years fixed followed by twelve years indeterminate, for a total of fourteen years, and sent Goodrick to prison, with the explicit recommendation in the Court's order captioned "Probation Violation Disposition and Notice of Right to Appeal, Therapeutic Community Recommendation" that she be given the "'Therapeutic Community' program to address your addiction to methamphetamine…" Probation Violation Disposition, p. 2. The Therapeutic Community is an excellent substance abuse treatment program and cognitive

restructuring program in the penitentiary, which emphasizes individual and group accountability in a very intense year-long program. Unfortunately, due to overcrowding in Idaho's prisons, not all those who need the program are given the program.

On September 25, 2005, Goodrick, through counsel, filed her "Motion for Reconsideration of Sentence Pursuant to I.C.R. 35". The basis of her motion was that she not only had not been allowed into the Therapeutic Community program, but in the intervening three months since she was sent to prison by this Court, she had not even been transported to the penitentiary for intake and evaluation. Goodrick was still housed in the Shoshone County jail, receiving absolutely no substance abuse treatment, nor any programming of any kind, simply waiting to someday get to prison for processing. On September 28, 2005, this Court granted her Rule 35 motion and placed her on a retained jurisdiction program. Retained jurisdiction is a six-month drug treatment program in prison in which the Court retains jurisdiction and can decide at the end of six months to place the person on probation or return them to prison. For whatever reason, there is usually no delay in getting an inmate into the retained jurisdiction program, and Goodrick was transported immediately to prison to begin that substance abuse treatment program. Following successful completion of that program, this Court on January 26, 2006, placed Goodrick back on probation. On November 4, 2006, the State of Idaho filed a Notice of Appeal, appealing this Court's Rule 35 decision. Goodrick remained on probation.

On May 24, 2007, the Idaho Court of Appeals filed its unpublished decision, holding that Goodrick's Rule 35 Motion was untimely filed, since her attorney waited until September 25, 2005 to file that motion on her behalf. The Court of Appeals stated "We make this holding reluctantly", but held that fourteen days after the Court's June 16, 2005, decision revoking probation, that this Court lost jurisdiction to decide Goodrick's Rule 35

motion. Idaho Rule of Criminal Procedure 35 requires motions be filed within fourteen days following revocation of probation. On July 19, 2007, the Remittitur relative to the Court of Appeals May 24, 2007 unpublished opinion was filed.

On June 12, 2007, Kendra Goodrick filed her "Motion for Credit for Time Served". That motion was not accompanied by a brief, but as part of the Motion for Credit for Time Served, Goodrick's counsel cited Idaho Code § 18-309, and *State v. Taylor,* 142 Idaho 30, 121 P.3d 961 (2005), for her argument that "…she is entitled to credit for the time she spent on probation prior to the Idaho Court of Appeals['] determination that the district court did not have jurisdiction to grant her I.C.R. 35 Motion." Motion for Credit for Time Served, p. 1. Goodrick noticed her Motion for Credit for Time Served for hearing on July 19, 2007. On July 3, 2007, the State of Idaho, through its counsel, filed its "Brief in Opposition to Motion for Credit for Time Served", arguing that same authority cited by Goodrick, in addition to Idaho Code § 19-2603, requires just the opposite result, that Goodrick's is not entitled to credit for time served while on probation prior to the Idaho Court of Appeals' determination. On July 18, 2007, Goodrick's counsel filed a "Memorandum in Support of Motion for Credit for Time Served" which is in essence a response to the State of Idaho's brief. Oral argument was held July 19, 2007. At the end of that hearing, personnel from the State of Idaho Department of Correction, at their own action, and not pursuant to any order of this Court, took Goodrick into their custody. The Court took Goodrick's Motion for Credit for Time Served under advisement. The matter is at issue.

II. JURISDICTION OF THE DISTRICT COURT TO DETERMINE GOODRICK'S MOTION FOR CREDIT FOR TIME SERVED.

At oral argument on July 19, 2007, the deputy prosecuting attorney representing the State of Idaho, without raising the issue in its brief, and without notice to Goodrick's

attorney, for the first time raised the issue of the Court's jurisdiction to even hear the Motion for Credit for Time Served. The State of Idaho argued that the Court lacks jurisdiction to consider Goodrick's Motion for Credit for Time Served, but provided no case law, statute or any other basis to support its argument. A quick review of Idaho case law shows the State of Idaho's argument is completely unsupported. *State v. Buys,* 129 Idaho 122, 128, 922 P.2d 419, 425 (Ct.App. 1996) proves that it is the district court, not the appellate courts, that are responsible for determinations of credit for time served, even following an appeal. In *Buys,* the Idaho Court of Appeals affirmed the district court regarding its calculations for credit for time served, but reversed "…the district court's decision insofar as it denied credit to Buys for confinement in jail during June and July 1991…" *Id.* The Idaho Court of Appeals then **remanded** the case "…to the district court for determination of the number of days to be applied against Buys' sentence for this period of incarceration." *Id.* The district court has jurisdiction to hear Goodrick's Motion for Credit for Time Served.

II. ANALYSIS.

Ordinarily, time spent on probation does not count in computing credit for time served on a sentence. Idaho Code § 19-2603. If one "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." Idaho Code § 18-309. (italics added). In other words, if you are legally released from prison, you do not get credit for time served while not in prison. Goodrick's argument is that according to the Idaho Court of Appeals unpublished opinion in her case, when the undersigned placed her on probation on January 26, 2006, the undersigned acted without jurisdiction to do so, and thus, she was released from prison and put on probation *illegally*. Goodrick argues that if you are released from prison legally and you do not get credit for time served while out of prison, then you must get credit for time served if

you were released illegally.

At the July 19, 2007 oral argument, counsel for the State of Idaho called Goodrick's request for time served "preposterous", "on the face of it, it is a ridiculous notion", and that the case law is "as clear as it gets, there is simply no basis for the relief requested by Ms. Goodrick." Goodrick's counsel in briefing and at oral argument relied upon Idaho Code § 18-309, § 19-2603, and *State v. Taylor,* 142 Idaho 30, 121 P.3d 961 (2005). Those cases miss the mark. There is an entire body of case law from other jurisdictions, completely on point, of which both sides are apparently ignorant. The Court's research on the issue has shown that the issue of "credit for time spent while erroneously at liberty" has not only been decided by many state and federal courts, but the issue has been resolved almost unanimously in Goodrick's favor. The deputy prosecutor's argument that "there is simply no basis for the relief requested by Ms. Goodrick" is itself entirely without basis.

The doctrine of "credit for time spent while erroneously at liberty" was discussed in detail more than ten years ago in J. Chin, *Getting Out of Jail Free: Sentence Credit for Periods of Mistaken Liberty,* 45 CATH. U. L. REV. 403 (Winter 1996). That law review article shows that not only is the result advocated by Goodrick not "preposterous" as the State of Idaho argues, but in fact is the result that would occur in the vast majority of states which have decided the issue.

> The doctrine of credit for time erroneously at liberty has been recognized by courts in the First, Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits, and state courts in the District of Columbia, Alabama, Arizona, Colorado, Florida, Georgia, Louisiana, Massachusetts, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee and Texas. Courts in California, Iowa, Mississippi, Missouri, New Hampshire, and Ohio have found the doctrine inapplicable in particular cases, but without suggesting that they reject it in principle. Even many prosecutors recognize the principle; the United States Department of Justice and authorities in Delaware, Nevada, and Wisconsin have granted credit without litigation. Only a handful of modern cases reject the doctrine.

45 CATH. U. L. REV. 403, 406-410. (footnotes omitted). "This article concludes that the doctrine remains viable and still serves an important function in our criminal justice system." 45 CATH. U. L. REV. 403 at 405. Since that law review article was written, the Supreme Court of our neighboring State of Washington, in a unanimous *en banc* opinion, adopted the doctrine of "credit for time spent while erroneously at liberty." *In re the Personal Restraint Petition of Michael W. Roach,* 150 Wash.2d 29, 74 P.3d 134 (Wash. 2003).

> The traditional rule applied by many courts was harsh: no matter how long a defendant spent at liberty, no matter how negligent the government had been, and regardless of whether the defendant brought the issue to the attention of the authorities, the defendant would be required to serve his full sentence. In recent decades, most courts have recognized two doctrines to alleviate the draconian effect of this approach. First, under the doctrine of "credit for time erroneously at liberty," a defendant mistakenly released for a short period of time or with a lesser degree of governmental fault will be granted day-for-day credit. Second, where a defendant is released for a longer period of time, and the government's error or inaction amount to waiver or estoppel, the convict will be excused from serving any part of the remainder of his sentence.

45 CATH. U. L. REV. 403-04. (footnotes omitted). The reason for the rule is to avoid the situation where a person such as Goodrick, with a fourteen year prison sentence, through no fault of her own erroneously serves a period at liberty on probation, then, later being exposed to more than fourteen years where she could be possibly incarcerated. This is better illustrated by the facts of the present case. Goodrick was 26 years old when sentence was imposed on February 24, 2004. In the worst case scenario, at that time, were she to serve all of her fixed and indeterminate sentence, she would be released from prison fourteen years later at age 40. If she were erroneously released on probation and not get credit for such time, in this case 540 days (a year and a half), she now faces exposure for service of that sentence until the age 41 or 42 due to that additional 540 days. In otherwords, the time Goodrick is exposed to her sentence increases. The doctrine of "credit for time spent while erroneously at

liberty" avoids that unfair result.

> The prevailing federal rule, as recently expressed by Judge Richard Posner, is that "[t]he government is not permitted to delay the expiration of the sentence either by postponing the commencement of the sentence or by releasing the prisoner for a time and then reimprisoning him." This principle, recognized by such luminaries as Learned Hand, Augustus Hand and Anthony Kennedy, is enforced by the doctrine of "credit for time erroneously at liberty." As the United States Court of Appeals for the Ninth Circuit has noted, "[u]nder the doctrine of credit for time at liberty, a convicted person is entitled to credit against his sentence for the time he was erroneously at liberty provided there is a showing of simple or mere negligence on behalf of the government and provided the delay in execution of sentence was through no fault of his own."

45 CATH. U. L. REV. 403-04. (footnotes omitted).

> Courts justify the doctrine by referring to principles of fairness towards defendants. As the Tenth Circuit wrote in the leading case of *White v. Pearlman*,[42 F.2d 788 (10th Cir. 1930)]:
>
> > A prisoner has some rights. A sentence of five years means a continuous sentence, unless interrupted by escape, violation of parole, or some fault of the prisoner, and he cannot be required to serve it in installments. Certainly a prisoner should have his chance to re-establish himself and live down his past. Denying credit in this situation would be to permit serious abuses: "[A] prisoner sentenced to five years might be released in a year; picked up a year later to serve three months, and so on *ad libitum*, with the result that he is left without even a hope of beating his way back."
>
> In *Smith v. Swope*, [91 F.2d 260 (9th Cir. 1937)] a similar Ninth Circuit case, the court noted that the doctrine was designed to limit the power of ministerial officers:
>
> > The least to which a prisoner is entitled is the execution of the sentence of the court to whose judgment he is duly subject. . . . [To deny credit] would give the marshal, a ministerial officer, power more arbitrary and capricious than any known in the law. A prisoner sentenced for one year might thus be required to wait forty under the shadow of his unserved sentence before it pleases the marshal to incarcerate him. Such authority is not even granted to courts of justice, let alone their ministerial officers. Courts are entitled to expect that the prosecution will execute its orders in a timely fashion by imprisoning convicts and keeping them confined until their sentences expire. Moreover, it can only degrade public confidence in the criminal justice system to permit prosecutors, marshals, or correctional authorities to disregard their responsibilities with impunity. Denying credit

> to convicts, in effect, would ratify errors, leaving individuals convicted of crimes at the mercy of ministerial governmental officers who could effectively compel them to serve their sentences in installments. In a time of prison overcrowding, releasing prisoners for later reincarceration might be a real temptation.
>
> Another important principle counterbalances these notions of fairness to defendants. Sentences imposed in accordance with the legal process should be served in full. While the concerns of Swope and Pearlman are legitimate, so too is the idea that criminals should not arbitrarily be relieved of their debts to society. In many situations where the rule is applied, granting credit represents a reasonable balancing of the interests of both the defendant and the state.

45 CATH. U. L. REV. at 411-12. (footnotes omitted).

Goodrick's conduct while on probation has by newspaper accounts, been exemplary. According to the Court file, there have been no probation violations, no requests for discretionary jail time made by Goodrick's probation officer, and no unfavorable communication by Goodrick's probation officer to the Court whatsoever. There is nothing in the Court file that would cause the Court to assume that Goodrick has been anything other than completely successful on probation. That is a factor for the Court to weigh. The California Court of Appeals explained that "**[t]here is a fundamental unfairness in allowing a prisoner who has established himself as a productive member of society over a long period of time to have his good work destroyed by recommitment**," [*In re Messerschmidt*, 163 Cal. Rptr. 580, 581 (Cal.Ct. App. 1980)] but concluded that there was no unfairness when the defendant had misbehaved on release. *Id.* at 581-82. 45 CATH. U. L. REV. at 415. (emphasis added). This is precisely the situation here. Goodrick has by all accounts "established herself as a productive member of society." It would be "fundamentally unfair" to "destroy her good work by recommitment." "Moreover, denying credit only when a defendant has engaged in post-release misconduct is an appropriate means of recognizing that, in an adversary system, the government should fairly expect to bear the

consequences of its mistakes." 45 CATH. U. L. REV. at 416.

In the case of *In re the Personal Restraint Petition of Michael W. Roach,* 150 Wash.2d 29, 74 P.3d 134 (Wash. 2003), the nine person Supreme Court of Washington sitting *en banc* unanimously decided to adopt the equitable doctrine of relief for a prisoner erroneously released by the State. "An erroneously released prisoner will be granted day-for-day credit against his sentence for time spent at liberty, provided that he did not contribute to his erroneous release and while at liberty, he did not abscond any remaining legal obligations and had no criminal convictions." 150 Wash.2d at 30, 74 P.3d at 135. Roach was errantly released from Washington prisons, and found three years later in Indiana, when stopped for a traffic violation. The Washington Supreme Court's analysis follows in its entirety:

> Whether to adopt the equitable doctrine of credit for time at liberty presents an issue of first impression in Washington. However, many federal and state courts have addressed whether principles of equity require that the sentence of a mistakenly released prisoner be credited with time spent out of custody. *E.g., Clark v. Floyd,* 80 F.3d 371 (9th Cir.1996); *Dunne v. Keohane,* 14 F.3d 335 (7th Cir.1994); *Martinez,* 837 F.2d 861; *Kiendra v. Hadden,* 763 F.2d 69 (2d Cir.1985); *Green,* 732 F.2d 1397; *Smith v. Swope,* 91 F.2d 260 (9th Cir.1937); *White v. Pearlman,* 42 F.2d 788 (10th Cir.1930); *McCall v. State,* 594 So.2d 733 (Ala.Crim.App.1992); *McKellar v. Ariz. State Dep't of Corrections,* 115 Ariz. 591, 566 P.2d 1337 (1977); *see also* Gabriel J. Chin, *Getting Out of Jail Free: Sentence Credit for Periods of Mistaken Liberty,* 45 Cath. U.L.Rev. 403 (1996). In these decisions, courts have moved away from a strict application of the traditional rule requiring a released prisoner to serve his full sentence no matter the circumstances of his release, *e.g., United States v. Loisel,* 25 F.2d 300 (5th Cir.1928) (denying credit for delay in execution of sentence); *Leonard v. Rodda,* 5 App. D.C. 256 (1895) (denying credit for time erroneously released), and have granted an erroneously released prisoner relief based on principles of equity and fairness.
>
> The Tenth Circuit in *Pearlman,* 42 F.2d at 789, was the first court to credit a released prisoner's sentence for time erroneously spent at liberty. In *Pearlman,* the court held "that where a prisoner is discharged from a penal institution, without any contributing fault on his part, and without violation of conditions of parole, that his sentence continues to run while he is at liberty." *Id.* The court reasoned:

> A prisoner has some rights. A sentence of five years means a continuous sentence, unless interrupted by escape, violation of parole, or some fault of the prisoner, and he cannot be required to serve it in installments. Certainly a prisoner should have his chance to re-establish himself and live down his past. Yet, under a strict rule ... a prisoner sentenced to five years might be released in a year, picked up a year later to serve three months, and so on ad libitum, with the result that he is left without even a hope of beating his way back.

Id.

Courts have examined the governing principles of *Pearlman* and have identified two bases for granting relief to an erroneously released prisoner; one is rooted in equity, the other in the due process clause. Courts granting equitable relief grant day-for-day credit against a sentence for time spent at liberty where the government mistakenly released a prisoner through inadvertence or mere negligence. *E.g., Clark,* 80 F.3d at 374; *Dunne,* 14 F.3d at 336 (credit not granted on facts); *Martinez,* 837 F.2d at 865; *Kiendra,* 763 F.2d at 73; *Green,* 732 F.2d at 1400; *Swope,* 91 F.2d at 262; *Pearlman,* 42 F.2d at 789; *McCall,* 594 So.2d 733; *McKellar,* 115 Ariz. at 593-94, 566 P.2d 1337.

Courts granting relief as a matter of due process clause analyze whether reincarceration after an erroneous release violates the convicted person's due process rights. The remedy is a complete exoneration of the remainder of the sentence. Courts have found due process violations where the government's conduct in releasing the prisoner amounted to gross negligence and the prisoner was at liberty for a long period of time. *E.g., Johnson,* 682 F.2d at 873; *United States v. Merritt,* 478 F.Supp. 804, 807-08 (D.D.C.1979); *Piper v. Estelle,* 485 F.2d 245, 246-47 (5th Cir.1973); *Shields v. Beto,* 370 F.2d 1003, 1005 (5th Cir.1967); *Derrer v. Anthony,* 265 Ga. 892, 463 S.E.2d 690, 693-94 (1995); *Brown v. Brittain,* 773 P.2d 570, 575 (Colo.1989); *In re Messerschmidt,* 104 Cal.App.3d 514, 163 Cal.Rptr. 580, 581 (1980).

In this case, Roach argues for the adoption and application of the equitable doctrine as constructed by the Ninth Circuit. *Martinez,* 837 F.2d at 865 (citing *Green,* 732 F.2d at 1400; *Swope,* 91 F.2d at 262; *Pearlman,* 42 F.2d at 789). Under "the doctrine of credit for time at liberty," the Ninth Circuit grants a convicted person credit against his sentence for time spent at liberty due to "simple or mere negligence on behalf of the government" and "provided the delay in execution of sentence was through no fault of [the convicted person]." *Martinez,* 837 F.2d at 865. Roach argues that the doctrine applies here because the DOC acted negligently in releasing him before the completion of his sentence, and he did not contribute to the erroneous release. Roach was at liberty from May 3, 1999 until April 2002, approximately 35 months. To credit his sentence with this time at liberty would complete his service; thus, rendering his current incarceration unlawful.

The Ninth Circuit first applied equitable relief of day-for-day credit for

time at liberty in the case of *Green,* 732 F.2d at 1400. In that case, Green was convicted of both federal and California State crimes and placed in California's custody to serve the federal and state sentences concurrently. *Id.* at 1398. The federal marshal did not place a hold on Green. *Id.* Thereafter, Green was paroled from the custody of California on the state conviction and successfully completed state parole. *Id.* Two years later, federal authorities discovered that Green had been released before completing his federal sentence and caused Green to be arrested on an escape warrant. *Id.* at 1399. He was incarcerated in a federal correctional facility for service of the remainder of his federal sentence. *Id.* at 1398-99.

On appeal, the Ninth Circuit held Green was entitled to credit against his federal sentence for his time spent at liberty. *Id.* at 1400. Relying on the principles of *Pearlman,* the court reasoned that the government had led Green to believe that he had completed his parole and was completely at liberty, and accordingly, "simple fairness" justified crediting his sentence. *Id.* The court concluded that an offender will receive "full credit for the time that he spent at liberty through the inadvertence of agents of the government and through no fault of his own." *Id.*

Four years later, the Ninth Circuit reiterated the equitable rule in *Martinez,* stating:

> Under the doctrine of credit for time at liberty, a convicted person is entitled to credit against his sentence for the time he was erroneously at liberty provided there is a showing of simple or mere negligence on behalf of the government and provided the delay in execution of sentence was through no fault of his own.

837 F.2d at 865 (citing *Green,* 732 F.2d at 1400; *Swope,* 91 F.2d at 262; *Pearlman,* 42 F.2d at 789) (holding equitable claim premature as offender had not exhausted administrative remedies). The Ninth Circuit most recently applied the doctrine in *Clark v. Floyd,* 80 F.3d 371, 374 (9th Cir.1996), holding the offender was entitled to credit for time erroneously at liberty.

The DOC contends that Washington has not adopted the federal doctrine, however, and that reincarcerating Roach for service of the remainder of his lawful sentence does not place him under an unlawful restraint. Further, the DOC argues that the laws of Washington authorize the State to reincarcerate Roach and that the doctrine of credit for time at liberty conflicts with Washington's laws. The DOC cites RCW 9.94A.625(1) and 9.31.090 as authority for reincarcerating Roach.

RCW 9.94A.625(1) provides that "[a] term of confinement ... shall be tolled by any period of time during which the offender has absented himself or herself ... without the prior approval of the entity in whose custody the offender has been placed." RCW 9.94A.625(1) does not apply here. Roach did not absent himself from custody without prior approval; rather, authorities released Roach on their own accord. RCW 9.31.090, likewise, does not apply. It provides that a person "who shall escape from custody, may be recaptured and imprisoned for a term equal to the

> unexpired portion of the original term." RCW 9.31.090. Roach did not escape from custody.
>
> Additionally, the DOC argues that it does not have the authority to pardon Roach or to shorten his sentence. *Honore v. Wash. State Bd. of Prison Terms & Paroles,* 77 Wash.2d 697, 700, 466 P.2d 505 (1970) (holding prisoner "remains in *custodia legis* and amenable to the duly entered judgment and sentence of a court" unless absolutely pardoned by the Governor, the prisoner dies prior to expiration of sentence, or the sentence expires). Thus, he remains amenable to the judgment and sentence in this case and may be reincarcerated.
>
> The DOC is correct that the laws of Washington do not prevent the State from reincarcerating Roach for service of the remainder of his lawful sentence. The laws, however, do not answer the question of whether, under an equitable theory, Roach receives credit against his sentence for time spent at liberty due to the State's mistake. We are persuaded that fairness and equity require this court to join the federal courts and sister states that have answered that question in the affirmative. We, therefore, hold that a convicted person is entitled to credit against his sentence for time spent erroneously at liberty due to the State's negligence, provided that the convicted person has not contributed to his release, has not absconded legal obligations while at liberty, and has had no further criminal convictions. Thus, an erroneously released prisoner's subsequent conduct is relevant to whether equitable relief will be granted.
>
> In Roach's case, the record demonstrates that the DOC acted negligently in releasing Roach prior to the completion of his sentence, and that Roach did not contribute to his release in any way. Further, it appears from the record that the DOC released Roach unconditionally, and accordingly, Roach did not abscond legal obligations while at liberty. Finally, during the three years Roach was at liberty, he had no criminal convictions. Thus, we hold Roach is entitled to the equitable relief of day-for-day credit against his sentence for the time he was at liberty.
>
> Roach additionally argues that his release and subsequent reincarceration violate the due process clause of the Fourteenth Amendment, *Johnson,* 682 F.2d at 873, and that the delay in execution of his sentence violates his right to speedy trial. U.S. Const. amend. 6; Const. art. I, § 22. Having found Roach entitled to the equitable relief of credit toward his sentence, we decline to address his constitutional arguments.

150 Wash.2d at 33-38, 74 P.3d at 136-38.

This Court finds Goodrick did nothing wrong. She did not escape. She apparently completely complied with all terms and conditions while on her probation. The Court, or the “government” made the error in granting the I.C.R. 25 Motion when it had been filed about two months beyond the fourteen day deadline. Goodrick is entitled to day-for-day

credit while she was on probation.

This holding is consistent with Idaho Code § 18-309 which states that you do not get credit for time served when you are released by "legal" means. The Idaho Court of Appeals has made it quite clear Goodrick was not placed on probation on January 26, 2006, by "legal" means. The clear language of that statue, conversely, would allow credit for time served while released by illegal means, as long as Goodrick was not the cause of that illegal means. Goodrick was not the cause of her release, this Court was.

This holding is consistent with Idaho Code § 19-2603, which speaks of no credit for time served being given when one is "at large under a suspended sentence". Implicit in that is that the suspended sentence was legally suspended. The Idaho Court of Appeals has held it was not legally suspended.

This holding is consistent with this Court's July 5, 2006, ruling in *State v. Duwe,* Kootenai County Case No. CRF 2003 3661, in which this Court in its "Order for Credit for Time Served", held that Duwe was entitled to 736 days credit for time served on probation while his appeal was pending. That decision was granted based upon *State v. Taylor,* 142 Idaho 30, 121 P.3d 961 (2005). In *Taylor* this Court had granted probation following a retained jurisdiction and following appeal by the State, it was held this Court lacked jurisdiction to do so. In *Duwe*, this Court granted credit for time served based on the same sequence of events as in *Taylor.* This Court's reasoning in *Duwe* follows in its entirety:

> **III. DUWE'S MOTION FOR CREDIT FOR TIME SERVED.**
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> On May 22, 2006, Duwe file his "Motion for Credit for Time Served", which contained limited briefing. Again, in this motion, Duwe requested a hearing but did not notice the matter for hearing.
>
> Credit for time served is a creature of a statute. *See* Idaho Code §18-309 and Idaho Code §19-2603. While not cited in this case, often motions for credit for time served are made pursuant to I.C.R. 35. The decision whether to conduct a hearing on an I.C.R. 35 motion is directed to the sound

discretion of the district court. *State v. Peterson,* 126 Idaho 522, 887 P.2d 67 (Ct.App. 1994). No hearing is necessary on the grounds stated in the motion, for the reasons stated below.

Duwe claims Idaho Code § 18-309 states a defendant is entitled to credit for time served for any time spent in incarceration, and that he is entitled to credit for the time he spent on probation prior to the Idaho Supreme Court's determination that the district court did not have jurisdiction to place him on probation. Motion for Credit for Time Served, p. 1. Duwe argues that under *State v. Taylor,* 142 Idaho 30, 31-31, 121 P.3d 961, 963 (2005), Duwe "remained committed to the custody of the Idaho Board of Correction" even while he was on probation, because the 180-day period of retained jurisdiction had expired and the district court lost jurisdiction over Duwe.

This issue has already been decided by this Court in *Taylor v. State*, Kootenai County Case No. CV 2005 7267. In that Post-Conviction case, this Court's Memorandum Decision and Order Granting Petitioner's Motion for Credit for Time Served filed May 23, 2006, addressed this very question. In that case, Taylor was likewise place on probation following a retained jurisdiction period, where the 180-day period had expired. That case was appealed and the decision of the Idaho Supreme Court, as mentioned immediately above, is found at *State v. Taylor,* 142 Idaho 30, 121 P.3d 961 (2005).

In *Taylor v. State,* this Court found Idaho Code § 18-309 was not applicable to this situation. That statute reads in part: "…if, …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." Taylor argued that since the State of Idaho Supreme Court held in *State v. Taylor* that he was not legally placed on probation, the statute is not applicable. The State of Idaho Supreme Court did not call the act of being placed on probation "legal" or "illegal", as Idaho Code § 18-309 is written, but the Idaho Supreme Court specifically held the District Court's act of placing Taylor on probation was "void because the court no longer had jurisdiction." This Court has already held that the act of placing a person on probation, following the expiration of the 180 day period, and following the *Taylor* decision, is a sentence imposed in an illegal manner. "This Court concludes Duwe's sentence was imposed in an illegal manner and that it was not an illegal sentence." *State v. Duwe*, Kootenai County Case No. CRF 2003 3661, Memorandum Decision and Order Denying I.C.R. 35 Motion for Correction of Illegal Sentence, p. 3. Thus, under the Idaho Supreme Court's decision in *Taylor,* and the District Court's decision in *Duwe,* Taylor was illegally released from imprisonment. Thus, Idaho Code § 18-309 is not applicable. At oral argument, the State of Idaho argued that Taylor's probation was a legal release. That position is not consistent with the decisions immediately just mentioned, and that position is inconsistent with the position that the State of Idaho at all times took in those cases.

In *Taylor v. State,* Taylor's second argument was that he is entitled to credit for time served is based on the language of the Idaho Supreme Court

> in *State v. Taylor,* 142 Idaho 30, 121 P.3d 961 (2005):
> Because the 180-day period of retained jurisdiction expired without the district court affirmatively placing the Defendant on probation, the Defendant remained committed to the custody of the Idaho Board of Correction. The district court's judgment placing the Defendant on probation was therefore void because the court no longer had jurisdiction.
> 121 P.3d at 962-63. (emphasis added). (Taylor's) Motion for Credit for Time Served, p. 2, *Taylor v. State*, Kootenai County Case No. CV 2005 7267.
>
> This Court noted in its "Memorandum Decision and Order Granting Petitioner's Motion for Credit for Time Served", p. 3, in *Taylor v. State*, Kootenai County Case No. CV 2005 7267: "While it seems odd that Taylor should get credit for time served when he was not actually in custody, this Court is unable to interpret the language of the Idaho Supreme Court's decision in *Taylor* any other way."
>
> Duwe asks for credit for time served for all time he spent on probation after March 15, 2004. Duwe fails to inform the Court when he went back into custody following the Idaho Supreme Court's decision in *State v. Taylor,* 142 Idaho 30, 121 P.3d 961 (2005). Duwe also fails to note that he has already been given credit for time served from March 15, 2004 to May 6, 2004, the date he was actually released from custody and placed on probation. The last calculation for credit for time served by this Court was on May 6, 2004, and Duwe was given credit for 366 days time served up to that date. For reasons stated below, Duwe is entitled to credit for time served from May 6, 2004, to the time he was taken back into custody, but this Court is unaware of that exact date. It is up to Duwe to make such computation and prepare a proposed order, with notice to the State regarding its accuracy and form.

State v. Duwe, Kootenai County Case No. CRF 2003 3661, "Memorandum Decision and Order Denying Defendant's I.C.R. 35 Motion for Leniency, Granting Defendant's Motion for Credit for Time Served, and Notice of Right to Appeal, filed June 2, 2006, pp. 4-7. No appeal was taken by the State of Idaho from either the July 5, 2006 Order or the June 2, 2006 Memorandum Decision and Order upon which it was based.

Far from being "ridiculous" and "preposterous" as argued by the deputy prosecutor, Goodrick's requested relief is warranted from an equitable standpoint since she at all times has been compliant with her probation, she did nothing wrong to prompt the events that followed her being placed on probation. It would make absolutely no sense for a woman who has successfully addressed her addiction, had a drug free child while on probation, to

have to return to prison to finish a sentence that was based upon a need at the time for drug treatment…treatment which the State of Idaho Department of Correction could not provide her. To hold otherwise would have the taxpayers of the State of Idaho paying to house Goodrick for a need which is no longer present, taking Goodrick out of the work force and away from her infant child.

Far from there being "simply no basis for the relief requested by Ms. Goodrick", as argued by the deputy prosecutor, Goodrick's requested relief is warranted from a legal standpoint. Goodrick's requested relief is supported by the vast majority of the courts which have decided the issue throughout the country. While this is a case of first impression in Idaho, it is the conclusion reached by fifteen states which have considered the issue, nine of the eleven federal circuits, *and prosecutors in "the United States Department of Justice" and in Delaware, Nevada, and Wisconsin" who "have granted credit **without litigation**.*" 45 CATH. U. L. REV. 403, 406-410. As noted, "Only a handful of modern cases reject the doctrine." *Id.* (emphasis added).

III. ORDER.

IT IS ORDERED that Goodrick's Motion for Credit for Time Served is **GRANTED**. In both sentences in both her cases, Goodrick is granted credit for time served from the time she was placed on probation on January 26, 2006, when she was errantly placed on probation as a result of the Court's decision on the I.C.R. 35 motion, to the date she was taken back into custody on July 19, 2007 by the State of Idaho Department of Correction. This amounts to 540 days. Combined with the credit Goodrick was given on January 26, 2006 in the amount of 572 days on the sentence imposed in CRF 2003 20026, and in the amount of 540 days on the sentence imposed in CRF 2003 26465, Goodrick now has a total credit for time served on the sentence imposed in CRF 2003 20026 in the amount of

1,112 days, and a total credit for time served on the sentence imposed in CRF 2003 26465 in the amount of 1,080 days. The amount of credit for time served in both sentences in both cases greatly exceeds the total number of days imposed on the fixed portion of Goodrick's sentences.

Dated this 20th day of July, 2007.

____
John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 20th day of July, 2007 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Idaho Department of Correction (208)327-7445

Eric Kiehl, Idaho Department of Correction, Probation and Parole, District 1, (208) 769-1481

Kootenai County Sheriff

Olivia Craven, Executive Director, State of Idaho Commission of Pardons and Parole, (208)334-3501

Val Siegel
Marty Raap

By ______________________
Jeanne Clausen, Court Clerk