

FILED 3-27-07

AT 10:45 o'clock a M  
CLERK OF THE DISTRICT COURT

*[Signature]*  
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. )  
 )  
 BRIAN SCOTT NORTON )  
 )  
 )  
 )  
 )  
 Defendant. )

Case No. **CRF 2004 14234**

**I.C.R. 35 ORDER AMENDING  
CREDIT FOR TIME SERVED AND  
NOTICE OF RIGHT TO APPEAL**

Norton having filed a Motion for Credit for Additional Time Served on March 5, 2007, and based upon the showing made and after review of the file, Norton's credit for time served is confirmed *and amended* as follows: Pursuant to I.C.R. 35 and I.C. § 18-309, that Norton be given credit against the sentence(s) imposed herein for days of time served calculated as follows:

From <u>6/18/04</u>	to <u>10/1/04</u>	or	<u>106</u> days
From <u>4/23/05</u>	to <u>5/11/05</u>	or	<u>19</u> days
From <u>5/11/05</u>	to <u>8/31/05</u>	or	<u>112</u> days
From <u>8/31/05</u>	to <u>2/24/06</u>	or	<u>178</u> days
From <u>5/11/06</u>	to <u>6/29/06</u>	or	<u>50</u> days
From <u>6/30/06</u>	to <u>7/26/06</u>	or	<u>27</u> days
<b>Total</b>			<b><u>492</u> days</b>

There are two amendments that must occur. The first amendment is a *reduction* in credit for time served. On July 27, 2006, a Minute Entry for Credit for Time Served was filed, giving Norton credit for 444 days time served. The basis for the *amendment* from 444 days down to 442 days is as follows. Due to an error made in the May 11, 2005 Minute

Entry Order Credit for Time Served, Norton was given credit for 127 days when at that time he should have been given credit for 125 days (6/18/04 to 10/1/04 = 106 days plus 2/23/04 to 5/11/04 = 19 days, total 125 days). Thus, two days are subtracted to all prior calculations for credit for time served.

The second amendment is an *addition* to credit for time served. In his Motion for Credit for Additional Time Served filed March 5, 2007, Norton claims he is entitled to credit for time served in the Pend Oreille County Washington jail from May 11, 2006 to June 29, 2006. In support of that motion, Norton has filed an Order for Transportation filed May 12, 2006 in Pend Oreille County, stating that Norton came before the judge there on May 12, 2006 "following the arrest of the defendant pursuant to a warrant issued by the State of Idaho and Defendant having waived extradition." Notice of Filing filed March 15, 2007. Norton also attached three pages of material apparently from Pend Oreille County, to his Motion for Credit for Additional Time Served. The State of Idaho filed the "State's Response to Defendant's Motion for Credit for Additional Time Served" on March 21, 2007. The Court has reviewed all briefs, all exhibits filed by Norton, and all prior orders for time served filed by this Court.

The State objects to credit for time served from April 23, 2006 to May 2, 2006. State's Response to Defendant's Motion for Credit for Additional Time Served, p. 3. A review of defendant's Motion for Credit for Additional Time Served shows that Norton is not making any claim for such time. Norton is only claiming credit for time served in Pend Oreille County, Washington for the period May 11, 2006 to June 29, 2006. Motion for Credit for Additional Time Served, pp. 1-2. Accordingly, the Court will not address the period from April 23, 2006 to May 2, 2006.

On May 10, 2006, this Court issued a Bench Warrant due to a Probation Violation dated May 1, 2006 and filed May 8, 2006. Norton had absconded from probation and

was not apprehended for some time. Norton was returned back to Idaho on June 30, 2006, and on July 26, 2006, following his probation violation hearing, Norton was sent to prison. Credit was given for time served from June 30, 2006 on, as that was when the May 10, 2006 warrant was returned as "served". Now, Norton has presented evidence that the Idaho warrant was served on May 11, 2006, while Norton was in custody in Pend Oreille County.

If credit for time served were based solely on when the Idaho bench warrant were served, Norton would be entitled to credit for time served from May 11, 2006 to June 29, 2006, based on the "Order for Transportation" filed May 12, 2006 in Pend Oreille County, stating that Norton came before the judge there on May 12, 2006 "following the arrest of the defendant pursuant to a warrant issued by the State of Idaho and Defendant having waived extradition." However, the date the warrant was served does not end the inquiry. If Norton were simply arrested in Pend Oreille County on May 11, 2006, on this Court's bench warrant, he would be due credit for any time served beginning May 11, 2006. However, Norton was arrested on April 24, 2006 in Pend Oreille County on the charge of supplying liquor to minors. Motion for Credit for Additional Time Served, Exhibit A; State's Response to Defendant's Motion for Credit for Additional Time Served, p. 3. Had he remained in custody on that Pend Oreille County Washington Charge until June 29, 2006, Norton would not be entitled to credit for time served from May 11, 2006 to June 29, 2006, on his Idaho offense, even though this Court's Idaho Bench warrant had been served on May 11, 2006. This is because his liberty would have already been denied by the Pend Oreille County Washington Courts, beginning April 24, 2006. *State v. Dorr*, 120 Idaho 441, 816 P.2d. 998 (Ct.App. 1991). However, Norton posted bond on this April 24, 2006 Pend Oreille County arrest on May 2, 2006. Thus, from May 2, 2006 on, his liberty was not constrained by the Washington courts. On May 11, 2006, Norton was served

with the Idaho warrant and arrested and waived extradition. This Court's Idaho bench warrant was the only thing constricting Norton's freedom beginning May 11, 2006. Thus he is entitled to credit for time served beginning May 11, 2006.

The State of Idaho claims that since Norton was given credit for time served by the Washington court for time served from May 11, 2006 to June 29, 2006, that he thus, cannot be given credit for those same days by this Court on this Idaho case. State's Response to Defendant's Motion for Credit for Additional Time Served, p. 4, citing *Matthews v. State*, 113 Idaho 83, 741 P.2d 370 (Ct. App. 1987). *Matthews*, while reiterating the legislative policy that a defendant not be given credit more than once for time spent in the county jail awaiting disposition of multiple and separate charges (113 Idaho at 87, 741 P.2d at 375), is not really on point. *Matthews* upheld the district court's refusal to give credit for time spent in custody pre-sentence, on both of two consecutive sentences that were imposed at the same time. Had the sentences been imposed concurrently, *Matthews* would have been entitled to credit for time served. In the present case, it is the Washington court in Pend Oreille County that gave Norton credit for time served on the Washington charge, from May 11, 2006 to June 29, 2006, even though during that time, the only thing keeping Norton in custody in Washington was the Idaho bench warrant (since Norton had posted bond on the Washington charge).

This Court cannot control what the Washington court did regarding credit for time served in that case. But since the only thing keeping Norton in custody in Washington from May 11, 2006 to June 29, 2006, was this Court's bench warrant, this Court must give Norton credit for the requested time served from May 11, 2006 to June 29, 2006. This is consistent with *Dorr* and *State v. Horn*, 124 Idaho 849, 850, 865 P.2d 176, 177 (Ct.App. 1993), "was the incarceration upon the offense for which he was sentenced?" In this case, as to the period from May 11, 2006 to June 29, 2006, the answer to that question is

"yes". The "cause" for his incarceration in Washington was the Idaho bench warrant.

**IT IS ORDERED**, pursuant to I.C.R. 35 and I.C. § 18-309, that Norton be given credit against the sentence imposed herein for days of time served calculated as follows:

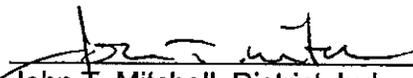
From	<u>6/18/04</u>	to	<u>10/1/04</u>	or	<u>106</u>	days
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				<b>Total</b>	<b><u>492</u></b>	<b>days</b>

**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 27th day of March, 2007.

  
John T. Mitchell, District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on the 27 day of March, 2007 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] ✓

Pros. Atty  
Defense Counsel - Linsey Mattison 446-1833  
Prosecuting Attorney - Lynn Nelson 446-1701  
PD

BRIAN SCOTT NORTON  
IDOC: 76082

CLERK OF THE DISTRICT COURT  
KOOTENAI COUNTY  
BY:  Deputy