

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 52279

STATE OF IDAHO,	)	
	)	Filed: October 14, 2026
Plaintiff-Respondent,	)	
	)	Melanie Gagnepain, Clerk
v.	)	
	)	
GORDON PATTON GRAVES, JR.,	)	
	)	
Defendant-Appellant.	)	
_____	)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Javier L. Gabiola, District Judge.

Order denying I.C.R. 35 motion for credit for time served, reversed and case remanded.

Erik R. Lehtinen, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

LORELLO, Judge

Gordon Patton Graves, Jr. appeals from an order denying his I.C.R. 35 motion for credit for time served. We reverse and remand for further proceedings consistent with this opinion.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Graves pled guilty to eluding a peace officer, I.C. § 49-1404(2), and possession of a controlled substance, I.C. § 37-2732(c)(1). On March 6, 2023, the district court sentenced Graves to an aggregate term of seven years, with a minimum period of confinement of five years, and retained jurisdiction. On August 17, 2023, at the conclusion of the period of retained jurisdiction, the district court entered an order suspending Graves' sentence and placing him on probation. On February 9, 2024, after Graves was charged with a new felony, his probation officer arrested him

on an agent's warrant for a probation violation. On September 9, 2024, pursuant to a conditional global plea agreement, Graves admitted he violated the terms of his probation in exchange for the State dismissing new additional charges. The district court revoked Graves' probation and ordered execution of his sentences. The district court specifically awarded Graves 576 days of credit and noted he was also entitled to credit for time served during his retained jurisdiction. Graves filed a motion for additional credit for time served, specifically requesting credit for time served during the period of retained jurisdiction. The district court denied Graves' motion, finding that its original calculation of credit for time served was correct. Graves appeals.

II.

STANDARD OF REVIEW

The question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts. *State v. Taylor*, 160 Idaho 381, 384-85, 373 P.3d 699, 702-03 (2016). We defer to the trial court's findings of fact unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous. *State v. Covert*, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006).

III.

ANALYSIS

Graves does not assert that the district court's calculation of 576 days of credit he received was incorrect. Instead, Graves contends the district court erred because it did not also specify the credit for time served attributable to the period of retained jurisdiction. Graves asks this Court to remand his case for a "proper calculation of credit." The State responds that the district court lacked jurisdiction to award this time or to correct any alleged miscalculation or other error by the Idaho Department of Correction (IDOC) in awarding credit for time served. We hold that the district court erred in failing to calculate the credit for the time Graves spent in the retained jurisdiction program.

As Graves notes, and the State concedes, a defendant is entitled to credit on the underlying offense for time served in the custody of the IDOC during a period of retained jurisdiction. *See* I.C. § 19-2601; I.C. § 18-309. It is also undisputed that the district court did not include a specific

number of days attributable to the period of retained jurisdiction in its calculation of credit for time served. Instead, in its disposition judgment revoking probation, the district court stated:

This credit includes all time served in the county jail prior to the entry of this judgment. [Graves] shall also receive credit for the time previously served on a retained jurisdiction. The credit for time served is calculated as follows: *[Graves] was arrested on March 10, 2022[,] and remained in custody until sentencing on March 6, 2023, 362 days. [Graves] was sent on a retained jurisdiction. [Graves] was arrested on PV on February 9, 2024[,] and remained in custody until September 9, 2024. 576 days.*

The question in this case is whether the district court must include the computation for credit for time served in the retained jurisdiction program within its judgment or whether that calculation is the IDOC's responsibility after the defendant's sentence has been ordered executed. Graves asserts the district court is required to do so. The State, on the other hand, contends that the IDOC is responsible for awarding such credit and any perceived error by the IDOC in determining such an award must be addressed through a habeas petition, not an I.C.R. 35(c) motion. The State relies on our decision in *State v. Martin*, 159 Idaho 860, 367 P.3d 255 (Ct. App. 2016), to support this assertion.

The “crux” of the issue in *Martin* was whether I.C.R. 35 or a habeas petition “was appropriate to enable the district court to consider [the defendant's] challenge to his amended sentence and his resulting parole eligibility date.” *Martin*, 159 Idaho at 864, 367 P.3d at 259. The issue arose because the IDOC only applied the credit for time served calculated in the first instance by the district court (including the period of retained jurisdiction) to only one of two consecutive counts. Because that failure was directly attributable to the IDOC, we concluded that the proper mechanism for redress was a habeas petition. *Id.* Indeed, as we noted, the failure to correctly apply the credit to both counts was never before the district court; thus, it was not the district court's error to correct. *Id.* at 865, 367 P.3d at 260.

Unlike in *Martin*, the alleged error here is attributable to the district court. Although the district court noted Graves was entitled to credit for time served during the retained jurisdiction, the district court's calculation did not include that time. The failure to do so was error. Accordingly, we remand this case for the district court to calculate the entirety of the credit for time served to which Graves is entitled, which shall include credit for time served during the period of retained jurisdiction.

IV.

CONCLUSION

The district court erred in denying Graves' motion for credit for time served. The order denying Graves' motion for credit for time served is reversed and the case is remanded for the proper calculation of credit for time served.

Chief Judge TRIBE and Judge FLEMING, **CONCUR.**