

ORIGINAL

Supreme Court Number 20060097
Grand Forks Co. No. 68-K-06149

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IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

20060097

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

APR 28 2006

State of North Dakota,
Plaintiff/Appellee,

STATE OF NORTH DAKOTA

vs.

James Leroy Iverson,
Defendant/Appellant,

APPEAL FROM ORDER DENYING JAIL TIME CREDIT
DISTRICT COURT OF GRAND FORKS COUNTY

BRIEF OF APPELLANT

James Leroy Iverson, Pro Se
P.O. Box 5521
Bismarck, N.D. 58⁵⁰⁶~~606~~-5521
Phone; none

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FACTS

The Defendant, James Leroy Iverson, was convicted of First and Second Degree Murder on May 2, 1969. On May 9, 1969 the Defendant was sentenced to life in prison for the First Degree Murder and to an indeterminate term of twenty-five to thirty years for the Second Degree Murder. The sentences were to run concurrently. The Defendant's life sentence was reduced to ninety-nine years in 1975. The North Dakota Supreme Court affirmed the Defendant's conviction in his direct appeal in 1971. In 1974, the Court affirmed a district court's decision not to grant the Defendant post-conviction relief.

After his arrest on November 27, 1968, the Defendant was incarcerated and not released from the Grand Forks county Jail until he was sentenced on May 9, 1969, which was a total of one hundred and sixty-four (164) days. The Defendant filed a motion to receive credit against his murder sentences for this time he spent in custody at the County Jail. The Defendant's original murder sentences made no reference to the time he spent in the County Jail prior to his conviction.

LEGAL ANALYSIS

The Defendant argues that he is entitled to credit for the days spent in the County Jail under N.D.C.C. § 12.1-32-02(2), which states:

Credit against any sentence to a term of imprisonment must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed or as a result of the conduct on which such charge was based. "Time spent in custody" includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.

CASE # 18-68-K-06149/001

STATE OF NORTH DAKOTA

VS. IVERSON, JAMES LEROY

OFFENSE : MURDER
SEVERITY/CLASS: AA

OFFICER NAME :

ISSUING AGENCY:
COURT : DISTRICT
DEF APPEARED : CITATION #
SENTENCE DATE :
CURRENT STATUS: 420 NOTICE OF APPEAL

MANDATORY CRT : N
DATE FILED : 11-25-68
PLEA :
SENTENCING JDG:

ACTUAL SPEED : SPEED ZONE :
OFFENSE DATE : 11-25-68
JUDGE ASSIGNED: KAPEN BRAATEN

D/L ST. & NUM.: ND 502-34-0314
VEHICLE TYPE : N/A
DATE CLOSED :

INTERESTED PARTIES

CITY/STATE

DOB

AP 001 WELTE, PETER D

GRAND FORKS, ND

DE 001 IVERSON, JAMES LEROY

BISMARCK ND

1-20-39

PL 001 STATE OF NORTH DAKOTA

CURRENT EVENTS

DATE & TIME

PLACE

ENTERED

NOTICE OF APPEAL

GRAND FORKS

3-30-06

CASE MANAGEMENT REVIEW TICKLER

6-27-06

NOT ASSIGNED

3-29-06

DOC # HISTORY EVENTS

DATE & TIME

JUDGE NAME

ENTERED

MOTION FOR JAIL CREDIT

10-28-05

KAREN BRAATEN

2-28-05

1 **FILE DESTROYED FLOOD 1997 - NO RECORD**

10-28-05

2 NOTICE OF MOTION

10-28-05

3 MOTION OF THE COURT

10-28-05

4 CERTIFICATE OF SERVICE BY MAIL

10-28-05

5 LETTER RESPONSE TO MOTION

2-01-06

6 AFFIDAVIT OF SERVICE BY MAIL

2-01-06

7 MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION FOR CREDIT FOR TIME SERVED

3-06-06
3-06-06

8 NOTICE OF APPEAL

3-29-06

9 APPEAL FROM ORDER DENYING JAIL TIME

3-29-06

10 CERTIFICATE OF SERVICE BY MAIL

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11 NOTIFICATION OF ASSIGNMENT AND CASE NUMBER

3-30-06

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ARGUEMENT

The Defendant, James Leroy Iverson, appeals the denial of the District Court, of not allowing credit for pre-sentence jail time.

It can be noted that the sentence imposed in 1969, did not have a statute that gave credits for time spent in custody. The sentence imposed, could only mean that a person would never be released, as a result of the length and type of sentence, that credits would be moot.

However, the District Court granted a new sentence, by changing the Life Sentence, to that of ninety-nine years. And this happened in 1975. Sure, there was not a statute authorizing the credit in 1969, but there was a statute in force in 1975, when the new sentence was imposed. That created credence that the Appellant could apply for credits of prior confinement, because that statute was in effect.

The legislature, defines the statute, as being designed after the Federal guidelines. The Federal guidelines have always allowed the credit for time spent in custody, of before, during, and after the sentence was imposed. Otherwise, to do so, could mean that a jurisdiction could hold an individual indefinitely in an institution, and that person would never get sentenced for the offense comited.

The Federal Library; 21 U.S.C.A. §§ 4-851, states that all persons shall recieve credit for all time spent in custody. The North Dakota Legislature fashioned the N.D.C.C. 12.1-32-02(2) after this Federal guideline, giving credits for time spent in custody, prior to sentencing.

N.D.C.C. 1-02-38; Intentions in the enactment of statutes;

It is presumed that;

1. Compliance with the constitution of the State and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.

The legislature passes the statute, whereby each part must be construed as a whole, State v. Mees 272 N.W. 2d. 61 ¶(3) (N.D. 1978).

Sentence is enhanced in this case, and later changed to a sentence, whereby the Appellant can be released with credits by statutory means, but time spent in custody must be credited to that sentence, otherwise, is double jeopardy, State v. Wells 265 N.W. 2d. ¶11 239 (N.D. 1978). There is a clear and common understanding of the statute, and we have similar statutes that have been enacted in the present timeframe, and are the generally accepted meaning, State v. Woodworth 234 N.W. 2d. 243 ¶(4) (1975). The statute that gives credit for prior sentence confinement was passed in 1975, 1985, and 2006. Each statute states the same remedy.

Appellant can also argue that he is being deprived Due Process, as to be treated as all others. This sentence of no credits, is contrary to statute provisions, and an illegal sentence, State v. Wika ND 33 574 N.W. 2d. 831 ¶ (4) (N.D. 1998). The U.S.C.A. Amendment 14 Due Process, is equal to 12.1-32-07 (6), whereby the defendant could not make bail, and had to be credited for jail time, State v. Trudeau 487 N.W. 2d. 11 ¶(5)(6) (N.D. 1992).

N.D.C.C. 12.1-32-02 (2), so states that credit "must be given" This is a mandatory must, as is stated in legislative order.

in the early and late 1960's, it was not a given fact that the court always gave the proper credits. Each individual had to ask for the credits to be awarded. However, in a Capital offense, it made no difference, as the sentenced felon would never be released. In 1973 the legislature passed a law, giving credits for pre-sentence confinement. Appellant motioned the Court for this credit, and was told by Judge Jahnke stated that he was entitled to the credit. However, Judge Braaten jumped in and decided that he did not warrant these credits.

The Appellant was sentenced to life on the convictions. But, in 1974, the Pardon Board changed the sentence to ninety-nine years. This meant that he, (Appellant) was going to receive all of the credits due him, like all other inmates. The credit for pre-trial confinement is awarded by statute, State v. Eugene 340 N.W. 2d 18 ¶(27) (N.D. 1987).

The "Legislative intent", was present in an early stage, through the first adoption, in 1973. It has continued to 2006, and each statute is a repeat of the former. So, since the statute was seen as a remedy and its intention for equality, that all persons "shall" receive credit for jail time, State v, Arcand 403 N.W. 2d 23 (N.D. 1987).

Therefore, the legislature has seen to the disparity, and has continued the same statute to award any time spent as a result of any charge where a conviction is had, that those credits be awarded.

There were (2), two other persons who had life sentences, and had their sentences changed to ninety-nine years, August Vogel, and James Alten, and they both received credit for jail time. So, when a sentence to life is pronounced, it still gets the same credence as all other sentences.

This case started on November 27, 1968, when Appellant was arrested. He was sentenced on May 9, 1969. However, his "appeal" to the United States District Court won him a reprieve. The Court "Ordered" a new trial, but that did not happen. The State argued that he did not warrant a new trial. Instead the Appellant had an evidentiary hearing on the issues present. In the North Dakota Supreme Court, State v. Iverson, 187 N.W. 2d 1, where he lost his appeal, before going Federal, he was still under the previous sentence imposed. However, in 1974, the Grand Forks County District Court, re-imposed the original sentence of life for the convictions. And that was later changed by the Pardons Board of North Dakota.

The statute defining the credits went into effect in 1973, and after the Court re-imposed the original sentence, the Court failed to award pre-trial confinement. Since the sentence was re-imposed, and after the effective date of this statute, N.D.C. 12.1-32-02(2), the Appellant deserves the credit for time served prior to the imposition of sentence. The statute was created to afford all fairness in the application of credits, and to deny the Appellant those credits, defeats the intended passage of this statute.

In reality, Iverson deserves these credits for the charges that he is serving the sentence for.

Dated this 26 day of April, 2006.

Respectfully submitted,


James Leroy Iverson

