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State v. Simcask Respondent's Brief Dckt. 42890

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42890 & 42891
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2012-19081 &
)	CR-2013-1026
STEVEN ERNST SIMCASK,)	
)	
Defendant-Appellant.)	RESPONDENT'S BRIEF
_____)	

Issues

1. Must Simcask's appeal in docket number 42890 be dismissed as untimely?
2. Has Simcask failed to establish that the district court abused its discretion in docket number 42891 by denying his successive Rule 35 motion for reduction of his unified sentence of 10 years, with two years fixed, imposed upon his guilty plea to felony DUI?

Statement Of The Facts And Course Of The Proceedings

Simcask pled guilty to felony DUI in both docket number 42890 and 42891 and the district court imposed concurrent unified sentences of 10 years, with two years fixed, and retained jurisdiction for 365 days. (R., pp.55-56, 151-52.) After a period of retained jurisdiction, the district court relinquished jurisdiction and ordered Simcask's underlying sentences executed without reduction. (R., pp.57, 155.) Simcask timely filed a Rule 35 motion in both cases requesting the district court reconsider its order relinquishing jurisdiction. (R., pp.58-59, 66-88, 156-57,164-86.) The district court granted Simcask's Rule 35 motions and again retained jurisdiction for 365 days. (R., pp.90-91, 94-95, 188-89, 192-93.) After a second period of retained jurisdiction, the district court relinquished jurisdiction and ordered Simcask's underlying sentences executed without reduction. (R., pp.96, 194.)

Simcask, then filed a "Motion to Retain Jurisdiction" in both cases, and filed a successive Rule 35 motion requesting the district court reconsider its October 10, 2014, order relinquishing jurisdiction in docket number 42891 only. (R., pp.5, 97-98, 113, 195-210.) After a hearing, the district court denied Simcask's successive Rule 35 motion in docket number 42891. (R., pp.221-23.) Simcask appealed, timely only from the district court's order denying his successive Rule 35 motion in docket number 42891. (R., pp.99-102, 225-28.)

I.

Simcask's Appeal In Docket Number 42890 Must Be Dismissed As Untimely

Idaho Appellate Rule 14(a) requires an appellant to file a notice of appeal within 42 days from the entry of judgment or order from which the appeal is taken. The requirement of perfecting an appeal within the 42-day time period is jurisdictional, and

any appeal taken after expiration of the filing period must be dismissed. I.A.R. 21 (failure to file a notice of appeal within time limits prescribed by appellate rules is jurisdictional and requires automatic dismissal of the appeal).

As conceded by Simcask's counsel on appeal, Simcask's appeal in docket number 42890 is untimely. The district court entered its order relinquishing jurisdiction in docket number 42890 on October 10, 2014. (R., p.96) Simcask, however, did not file his notice of appeal until December 31, 2014 (R., p.99), well after the 42-day period provided by I.A.R. 14. Because Simcask failed to file a timely notice of appeal, his appeal in docket number 42890 must be dismissed as untimely. I.A.R. 21.

II.

Simcask Has Failed To Show The District Court Abused Its Discretion In Docket Number 42891 By Denying His Successive Rule 35 Motion

"Mindful of the fact that his appeal is untimely in docket number 42890 and that he already filed a Rule 35 motion, which was granted, in docket number 42891," Simcask nevertheless asserts the district court abused its discretion by denying his successive Rule 35 motion in docket number 42891 "because a DOR that he had received for sexual harassment had been reduced to a charge of mere physical contact." (Appellant's brief, p.3.) Simcask's claim fails because the district court lacked jurisdiction to rule on his successive Rule 35 motion.

Idaho Criminal Rule 35 provides that "no defendant may file more than one motion seeking a reduction of sentence under this Rule." In State v. Bottens, 137 Idaho 730, 52 P.3d 875 (Ct. App. 2002), the Idaho Court of Appeals held that "a motion to reconsider the denial of a Rule 35 motion is an improper successive motion and is

prohibited by Rule 35. We hold that the prohibition of successive motions under Rule 35 is a jurisdictional limit.”

Simcask filed his first Rule 35 motions in these cases on August 30, 2013. (R., pp.58-59, 156-57.) The district court granted the motions on March 13, 2014. (R., pp.90-91, 188-89.) Simcask’s second Rule 35 motion, filed on October 24, 2014 in docket number 42891 *only* (R., pp.5, 113, 197-99), was an improper successive Rule 35 motion over which the district court had no jurisdiction. Because the district court lacked jurisdiction to consider Simcask’s successive Rule 35 motion, the district court’s order denying the motion must be affirmed.

Conclusion

The state respectfully requests this Court to dismiss Simcask’s appeal in docket number 42890 and to affirm the district court’s order denying Simcask’s successive Rule 35 motion in docket number 42891.

DATED this 11th day of December, 2015.

/s/
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