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State v. Lafave Appellant's Reply Brief Dckt. 43170

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43170
)	
v.)	ADA COUNTY NO. CR 2014-17499
)	
DEBORAH DEANNE LAFAVE)	APPELLANT'S
AKA GRASSER,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Deborah Deanne Lafave appeals from the district court's Judgment of Conviction and Commitment. Ms. Lafave asserts that the district court abused its discretion by imposing excessive sentences without giving proper weight and consideration to the mitigating factors that exist in her case. Additionally, Ms. Lafave asserts that the district court abused its discretion by denying her Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion for a reduction of sentence.

This Reply Brief is necessary to address the State's assertion that the district court had lost jurisdiction prior to ruling on Ms. Lafave's Rule 35 motion.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Ms. Lafave's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference.

ISSUES

1. Did the district court abuse its discretion when it imposed, upon Ms. Lafave, unified sentences of fourteen years, with four years fixed, to be served concurrently, following her pleas of guilty to two counts of grand theft?¹
2. Did the district court abuse its discretion when it denied Ms. Lafave's Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Ms. Lafave's Rule 35 Motion For A Reduction Of Sentence

In its Respondent's Brief, the State asserted that, "the court had no jurisdiction, 292 days after the entry of judgment, to rule on the [Rule 35] motion." (Respondent's Brief, p.3.) However, Ms. Lafave asserts that the district court did not lose authority to rule on her motion because the district court ruled within a reasonable time.

Under Rule 35, a district court "may reduce a sentence within 120 days after the filing of a judgment of conviction," and "may also reduce a sentence upon revocation of probation or upon motion made within fourteen (14) days after the filing of the order revoking probation." I.C.R. 35(b). However, the Idaho Supreme Court has held "a district court does not lose jurisdiction to act upon a timely motion under Rule 35 merely because the 120-day period expires before the judge reasonably can consider and act

¹ This Reply Brief will not address Ms. Lafave's first issue on appeal as the State's argument are unremarkable and, as such, do not require any further argument.

upon the motion.” *State v. Chapman*, 121 Idaho 351, 354 (1992) (internal quotation marks omitted). In *Chapman*, the court acknowledged that the limit “protects judges against repeated importunities by those sentenced and it ensures that the court does not usurp the responsibilities of parole officials by retaining jurisdiction indefinitely and acting on the motion in light of the movant’s conduct in prison.” *Id.* at 353, quoting *United States v. Smith*, 650 F.2d 206, 208 (9th Cir.1981). Although mindful of these underlying policies, the *Chapman* court determined that a strict interpretation of the normal 120-day limitation would be highly impractical and could cause the trial court to lose jurisdiction without ever having a chance to consider the motion. *Id.* As an alternative, the court read the rule broadly and found that:

[a]llowing a trial court to rule within a “reasonable” time will allow the court to fulfill its own duties, yet will prevent cases in which the defendant files a Rule 35 motion at the very end of the 120-day period, for instance on the 119th day, leaving the court only one day to rule on the motion.

Id. at 353-54. Accordingly, if a Rule 35 motion is timely filed, district courts have a reasonable time within which they must decide the motion.

The Idaho Supreme Court held that the district court’s delay in ruling on a Rule 35 must be “reasonable,” and a significant factor of the reasonableness of the delay is the extent to which the delay was caused by circumstances beyond the defendant’s control. *Id.* at 354-55. It is defense counsel’s responsibility to request that the district court make a ruling on a Rule 35 motion within a reasonable time frame, or otherwise provide an adequate record and justification for the delay, to avoid the risk of the trial court losing jurisdiction. *State v. Day*, 131 Idaho at 184, 186 (Ct. App. 1998).

The Idaho Supreme Court has held that delaying a ruling while waiting for the defendant to come up with additional materials to support his Rule 35 motion is

reasonable. In *State v. Book*, 127 Idaho 352, 355-56 (1995), the district court took nine months to rule on the defendant's Rule 35 motion "in order to give [the defendant] time to gather additional materials, and then ruled shortly after the information was received." *Id.* In reaching this holding, the Idaho Supreme Court cited approvingly of *State v. Brydon*, 121 Idaho 890 (Ct. App. 1992) (*overruled on other grounds by State v. Tranmer*, 135 Idaho 614 (Ct. App. 2001), for the proposition that "a delay in ruling in order to receive additional information is not unreasonable." *Book*, 127 Idaho at 355. Although *Brydon* has since been overruled by the Court of Appeals insofar as it "condone[d] a trial court's purposeful delay in ruling on a Rule 35 motion simply in order to consider a defendant's subsequent conduct while incarcerated," *Tranmer*, 135 Idaho at 618, it is obviously still good law for the proposition for which it was cited by the Supreme Court in *Book*.

Additionally, in *State v. Maggard*, 126 Idaho 477, 479-80 (Ct. App. 1994), which came after *Brydon*, but before *Tranmer* and *Book*, the Court of Appeals implicitly reaffirmed the core holding of *Brydon*. In that case, the Court of Appeals held that there was an insufficient record to determine that the district court's delay in ruling on the defendant's Rule 35 motion was reasonable and, in doing so, pointed out that "[t]here is no indication in the record that Maggard requested additional time to supplement the record or that he intended to submit any additional evidence after the motion was filed," thereby implying that had the defendant done so, the delay might have been reasonable. *Maggard*, 126 Idaho at 479.

Ms. Lafave's motion was filed on August 4, 2015, 117 days after the district court's Judgment of Conviction and Commitment was filed. (R., p.51; Augmentation:

Motion for Reconsideration of Sentence and for Leave.) The motion requested leave to supply the district court with additional information in support of the motion. (Augmentation: Motion for Reconsideration of Sentence and for Leave.) Ms. Lafave's motion was followed by numerous documents in support. (See Augmentation: Addendum to Defendant's Motion for Reconsideration of Sentence – Seventh Addendum to Defendant's Motion Pursuant to ICR 35.) The district court received the last of the additional materials on January 15, 2016. (Augmentation: Seventh Addendum to Defendant's Motion Pursuant to ICR 35.) The district court ruled on the Rule 35 motion ten days later, on January 25, 2016. (Augmentation: Memorandum Decision and Order.) As such, the motion was resolved within less than six months after it was timely filed and ten days after the district court received the last of the new information in support of the motion.

Although Ms. Lafave acknowledges that an order was not issued upon her Rule 35 motion for 174 days, approximately six months, she asserts that the district court did not lose jurisdiction because the delay is attributable to her need to supplement with new and additional information. Just as was the case in *Book* and *Brydon*, the delay to gather additional information here was reasonable. This is especially true in light of the Idaho Supreme Court's holding in *Book* where the total delay was nine months and the majority of the delay was attributed to the district court's allowing the defendant "time to gather additional materials." *Book*, 127 Idaho at 355-56. Therefore, Ms. Lafave asserts this Court can address the question of whether the district court abused its discretion in denying her Rule 35 motion on the merits.

CONCLUSION

Ms. Lafave respectfully requests that this Court reduce her sentences as it deems appropriate. Alternatively, she requests that the order denying her Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 14th day of April, 2016.

_____/s/_____
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of April, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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DISTRICT COURT JUDGE
E-MAILED BRIEF

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ADA COUNTY PUBLIC DEFENDER
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CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas