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## State v. Younger Respondent's Brief Dckt. 43369

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43369
Plaintiff-Respondent,	)	
	)	Canyon County Case No.
v.	)	CR-2013-1856
	)	
RUSSELL YOUNGER,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Younger failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of his unified sentence of 12 years, with four years fixed, imposed following his guilty plea to lewd conduct with a minor under 16?

Younger Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Younger pled guilty to lewd conduct with a minor under 16 and the district court imposed a unified sentence of 12 years, with four years fixed, and retained jurisdiction. (42659 R., pp.47-49.) Following the period of retained jurisdiction, the district court

suspended Younger's sentence and placed him on supervised probation for 12 years. (42659 R., pp.57-60.)

Younger subsequently violated his probation and, on September 30, 2014, the district court entered an order revoking Younger's probation. (42659 R., pp.82-83.) Younger timely appealed, and the Idaho Court of Appeals affirmed the district court's order revoking probation. (42659 R., pp.97-100; 43369 R., pp.15-17.) On October 6, 2014, Younger filed a timely Rule 35 motion for a reduction of sentence, which the district court denied on May 20, 2015. (42659 R., pp.84-86; 43369 R., pp.7-10.) Younger filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (43369 R., pp.11-14.)

Mindful that he failed to provide any new or additional information in support of his Rule 35 motion for a reduction of sentence, Younger nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion because "this was [his] first probation violation." (Appellant's brief, pp.4-5.) There are two reasons why Younger's argument fails. First, Younger's Rule 35 motion for a reduction of sentence was not timely ruled upon. Second, Younger failed to meet his burden of providing any new or additional evidence in support of his Rule 35 motion for sentence reduction.

Idaho Criminal Rule 35 vests the trial court with jurisdiction to consider and act upon a motion to reduce a sentence that is filed within 14 days after the entry of an order revoking probation unless that motion is to reduce an illegal sentence. I.C.R. 35. The 14-day filing limit is a jurisdictional limit on the authority of the trial court to consider a timely motion for reduction of sentence. State v. Sutton, 113 Idaho 832, 833, 748 P.2d 416, 417 (Ct. App. 1987). The district court will lose jurisdiction to rule upon a

timely filed Rule 35 motion if it does not act upon the motion within a “reasonable time” beyond the stated filing deadline. See State v. Chapman, 121 Idaho 351, 352, 825 P.2d 74, 75 (1992); State v. Tranmer, 135 Idaho 614, 616, 21 P.3d 936, 938 (Ct. App. 2001). The defendant bears the burden of showing the reasonableness of any delay. State v. Day, 131 Idaho 184, 953 P.2d 624 (Ct. App. 1998).

The delay in ruling on the motion in this case was 226 days, 218 days more than the original 14-day deadline for filing the motion. Nothing in the record justifies such a lengthy delay. The district court failed to rule on Younger’s Rule 35 motion while it was vested with jurisdiction. The district court should be affirmed because it lost jurisdiction, due to the passage of time, to grant Younger’s Rule 35 motion for a reduction of sentence.

Even if Younger’s motion is considered timely ruled upon, he has still failed to establish an abuse of discretion. In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion “does not function as an appeal of a sentence.” The Court noted that where a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, “[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Absent the presentation of new evidence, “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence.” Id. Accord State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008).

On appeal, Younger acknowledges that he failed to provide any new or additional information in support of his Rule 35 motion for a reduction of sentence. (Appellant's brief, p.5.) He merely argues that the district court should have reinstated him on probation because the probation violation he received was his first probation violation in the instant case. (Appellant's brief, p.5.) This was not new information before the district court, as the court was aware, at the time that it revoked Younger's probation, that the violation was Younger's first probation violation in the instant case. Because Younger presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion for a reduction of sentence.

#### Conclusion

The state respectfully requests this Court to affirm the district court's order denying Younger's Rule 35 motion for a reduction of sentence.

DATED this 16th day of December, 2015.

/s/ \_\_\_\_\_  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ \_\_\_\_\_  
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