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## State v. West-Eaton Respondent's Brief Dckt. 43473

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43473
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR-2008-19036
	)	
JAMES CHARLES WEST-EATON,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Must West-Eaton's appeal be dismissed as untimely?

West-Eaton's Appeal Should Be Dismissed Because It Is Untimely

West-Eaton pled guilty to sexual abuse of a child under the age of 16 years and the district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction for 180 days. (R., pp.89-92.) The judgment of conviction and order retaining jurisdiction was filed on July 1, 2009. (R., p.89.) On December 31, 2009 (183 days later), the district court entered an order purporting to extend its jurisdiction for an

additional 14 days. (R., pp.94-95.) On January 13, 2010, the district court entered a second order purporting to retain jurisdiction for an additional eight weeks. (R., pp.97-98.) On March 5, 2010, the district court entered an order purporting to extend the period of retained jurisdiction until May 17, 2010. (R., pp.119-20.) On April 6, 2010, the district court entered an order suspending West-Eaton's sentence and placing him on supervised probation for eight years. (R., pp.123-32.)

After West-Eaton violated his probation, in November 2014, the district court revoked his probation, ordered the underlying sentence executed, and retained jurisdiction a second time. (R., pp.181-89.) On June 25, 2015, the district court entered an order relinquishing jurisdiction. (R., pp.193-97.) West-Eaton filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.204-07.) He also filed a Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.202-03, 213-14.)

West-Eaton asserts that the district court abused its discretion, both by relinquishing jurisdiction in light of his "intellectual and social limitations" and support from his parents, and by denying his Rule 35 motion for a reduction of sentence in light of his continued participation in programming following his rider. (Appellant's brief, pp.4-7.) West-Eaton's appeal must be dismissed, however, because West-Eaton failed to timely file his notice of appeal from any order over which the district court had subject matter jurisdiction.

Rule 14 of the Idaho Appellate Rules provides that an appeal in a criminal matter must be filed within 42 days from the date of the filing of "any judgment or order of the district court appealable as a matter of right." I.A.R. 14(a). An order entered by the

district court without subject matter jurisdiction is void and, therefore, not appealable as a matter of right. State v. Urrabazo, 150 Idaho 158, 163, 244 P.3d 1244, 1249 (2010). The failure to timely file a notice of appeal from an appealable order is a jurisdictional defect and requires automatic dismissal of the appeal. I.A.R. 21; State v. Ciccone, 150 Idaho 305, 306, 246 P.3d 958, 959 (2010) (citation omitted); Urrabazo, 150 Idaho at 163, 244 P.3d at 1249.

West-Eaton filed his notice of appeal within 42 days of the district court's June 25, 2015 order relinquishing jurisdiction. (Compare R., p.193 with R., p.204.) However, that order is void for want of subject matter jurisdiction. When the district court originally sentenced West-Eaton, on July 1, 2009, it retained jurisdiction pursuant to Idaho Code § 19-2601(4). (R., pp.89-92.) At the time, Idaho Code § 19-2601(4) strictly limited the period of retained jurisdiction to 180 days. I.C. § 19-2601(4) (2004). The court's jurisdiction thus expired on December 28, 2009, at which time West-Eaton automatically remained committed to the custody of the Department of Correction. I.C. § 19-2601(4) (2004); Urrabazo, 150 Idaho at 163, 244 P.3d at 1249; State v. Petersen, 149 Idaho 808, 811, 241 P.3d 981, 984 (Ct. App. 2010).

Although the district court entered an order purporting to extend its jurisdiction on December 31, 2009, this order, filed 183 days after the entry of judgment, was entered after the 180-day period of retained jurisdiction authorized by I.C. § 19-2601(4) had expired. (R., pp.94-95.) The court's jurisdiction may be extended for up to an additional 30 days under "extraordinary circumstances;" however, the district court may do so *only* if it issues an order extending its jurisdiction *before* the 180-day period of retained jurisdiction expires. I.C. § 19-2601(4); State v. Taylor, 142 Idaho 30, 31, 121 P.3d 961,

962 (2005); Petersen, 149 Idaho at 812, 241 P.3d at 985. Because the district court in this case did not extend its jurisdiction before the expiration of the 180 days, it was without jurisdiction, three days after its jurisdiction had expired, to do so. (See R., pp.89-92, 94-95.) Furthermore, even if the period of retained jurisdiction had been extended by 30 days, the court's jurisdiction would have expired on January 27, 2010. As such, the district court's order purporting to place West-Eaton on probation, entered April 6, 2010 (279 days after judgment), and all of the orders that followed – including the court's June 25, 2015 order relinquishing jurisdiction and its August 13, 2015 order denying West-Eaton's Rule 35 motion for sentence reduction – were entered without subject matter jurisdiction and are void. Urrabazo, 150 Idaho at 163, 244 P.3d at 1249; Taylor, 142 Idaho at 31-32, 121 P.3d at 962-63; Petersen, 149 Idaho at 811, 241 P.3d at 984. West-Eaton did not file his notice of appeal until July 29, 2015 (R., p.204) – over five years after the district court lost jurisdiction. Because West-Eaton did not file his notice of appeal within 42 days of any order appealable as a matter of right, his appeal is untimely and must be dismissed. Urrabazo, 150 Idaho at 163, 244 P.3d at 1249.

Conclusion

The state respectfully requests this Court to dismiss West-Eaton's appeal as untimely.

DATED this 3rd day of March, 2016.

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/s/ Lori A. Fleming  
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Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of March, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General