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State v. Thompson Respondent's Brief Dckt. 43714

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LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

JESSICA M. LORELLO
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43714
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2013-20004
)	
CHRISTOPHER WAYNE THOMPSON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Thompson failed to establish the district court abused its discretion by denying his Rule 35 motion for reduction of his unified sentence of 52 years, with 16 years fixed, imposed upon his guilty plea to second degree murder?

Thompson Has Failed To Establish The District Court Abused Its Sentencing Discretion

Thompson pled guilty to second degree murder and the district court imposed a unified sentence of 52 years, with 16 years fixed. (R., pp.255-57.) Judgment was entered on March 24, 2015. (R., p.255.) Sixty-three days later, on May 26, 2015, Thompson filed a timely Rule 35 motion for a reduction of sentence. (R., pp.258-59.) A

hearing on the motion was set for July 10, 2015; however, the hearing was continued no less than three times and was not actually held until October 2, 2015 – 192 days after judgment. (R., p.10.) Following the hearing, the district court took the motion under advisement. (R., pp.265-67.) On October 27, 2015 – 217 days after judgment and 154 days after the motion was filed – the district court entered an order denying Thompson’s Rule 35 motion. (R., pp.268-76.) Thompson filed a notice of appeal timely only from the district court’s order denying his Rule 35 motion. (R., pp.277-80.)

Thompson asserts the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence¹ in light of his reiteration he was stabilized on psychotropic medications and because he was continuing to participate in mental health treatment while incarcerated. (Appellant’s brief, pp.4-7.) There are two reasons why Thompson’s argument fails. First, Thompson’s Rule 35 motion for a reduction of sentence was not timely ruled upon. Second, even if this Court reviews the merits of Thompson’s claims, he has failed to establish an abuse of discretion.

The district court lacked jurisdiction to consider Thompson’s Rule 35 motion. Rule 35 provides both that a district court may reduce a sentence within 120 days after judgment and that a motion for reduction may be made within 120 days after judgment. The Idaho Supreme Court has held that a trial court has jurisdiction to rule on a Rule 35 motion within a “reasonable time” after the expiration of the 120 days. State v.

¹ Although Thompson’s counsel raised the issue of an illegal sentence at the hearing on Thompson’s Rule 35 motion, Thompson is not, on appeal, challenging the district court’s denial of his request to correct an illegal sentence. (10/2/15 Tr., p.18, Ls.19-21; Appellant’s brief, p.4, n.1.)

Chapman, 121 Idaho 351, 352, 825 P.2d 74, 75 (1992). If, however, the trial court fails to rule upon the motion “within a reasonable time after the expiration of the 120-day period, the trial court loses jurisdiction.” Id. In addition, it is the movant’s responsibility to “precipitate action 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.” Chapman, 121 Idaho at 354, 825 P.2d at 77; see also State v. Payan, 132 Idaho 614, 619, 977 P.2d 228, 233 (Ct. App. 1998) (citing State v. Day, 131 Idaho 184, 186, 953 P.2d 624, 626 (Ct. App. 1998)); State v. Simpson, 131 Idaho 196, 197 n.2, 953 P.2d 636, 637 n.2 (Ct. App. 1998).

The district court failed to rule on Thompson’s Rule motion for a reduction of sentence while it was vested with jurisdiction. Thompson filed his Rule 35 motion 63 days after judgment. (R., pp.255, 258.) The court had a “reasonable time” (more than five months) to rule on the motion. According to the register of actions, a hearing on the motion was scheduled for July 10, 2015, but was vacated per Thompson’s counsel’s request and reset for July 17, 2015. (R., p.10.) The hearing was vacated a second time, per Thompson’s counsel’s request, and rescheduled for August 21, 2015. (R., p.10.) The August hearing was continued, apparently again per Thompson’s counsel’s request, and reset for October 2, 2015 – 192 days after judgment – when the hearing was finally held. (R., p.10.) The district court did not rule on the motion at the hearing, however, and instead took the motion under advisement. (R., pp.265-67.) On October 27, 2015 – 217 days after judgment and 154 days after the motion was filed – the district court finally entered an order denying Thompson’s Rule 35 motion. (R., pp.268-76.) The record contains no explanation for the multiple continuances of the hearing on

the motion, and nothing in the record justifies such a lengthy delay. Furthermore, Thompson presented no information, at the hearing on his motion, which would not have been available in July and/or August 2015, when the hearing on the motion was scheduled the first three times. (See generally 10/2/15 Tr.; PSI, pp.315-21.²) Because nothing in the record shows a reason for the delay, the court had no jurisdiction, five months after the motion was filed and more than seven months after the entry of judgment, to rule on the motion. The district court's order denying Thompson's Rule 35 motion for a reduction of sentence should be affirmed because the court lost jurisdiction, due to the passage of time, to grant the motion.

Even if Thompson's motion were 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).

² PSI page numbers correspond with the page numbers of the electronic file "Christopher W Thompson Sealed.pdf."

Thompson did not appeal the judgment of conviction in this case. Information with respect to Thompson's stabilization on psychotropic medications, participation in mental health treatment and counseling while incarcerated, and lack of disciplinary problems while incarcerated was before the district court at the time of sentencing. (3/23/15 Tr., p.78, Ls.12-17; PSI, pp.66, 71, 162-63, 167, 169-70; R., p.186.) That Thompson has continued to be stable on his psychotropic medications, participate in mental health treatment and counseling, and not have disciplinary problems is not "new" information. Because Thompson presented no new evidence in support of his Rule 35 motion, he failed to demonstrate in the motion that his sentence is 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.

Conclusion

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

DATED this 29th day of July, 2016.

/s/

JESSICA M. LORELLO
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of July, 2016, 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.

/s/

JESSICA M. LORELLO
Deputy Attorney General