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State v. Linford Respondent's Brief Dckt. 45358

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 45358 & 45359
Plaintiff-Respondent,)	
)	Bannock County Case Nos.
v.)	CR-2013-1187 & CR-2014-13658
)	
CHERYL LINFORD, FKA CHERYL)	
STONE,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	

ISSUES

1. Has Linford failed to establish that the district court abused its discretion by denying her second Rule 35 motion for a reduction of sentence in case number 45358?
2. Has Linford failed to establish that the district court erred by granting her motions for credit for time served in case numbers 45358 and 45359?

STATEMENT OF THE CASE

In 2013, Linford pled guilty to delivery of Oxycodone in case number 45358 and the district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.112-18.) The judgment of conviction was entered on July 31, 2013. (R.,

p.112.) Linford filed a Rule 35 motion for a reduction of sentence 13 days later, on August 13, 2013. (R., pp.136-37.) Following the period of retained jurisdiction, on December 16, 2013, the district court suspended Linford's sentence and placed her on supervised probation for five years. (R., pp.122-29.)

In 2014, Linford violated her probation in case number 45358, in part by committing the new crime of possession of methamphetamine in case number 45359. (R., pp.134-35, 168-74, 271-72, 292-93.) The district court revoked Linford's probation in case number 45358, executed the underlying sentence, and retained jurisdiction a second time. (R., pp.168-74.) In case number 45359, Linford pled guilty to possession of methamphetamine and the district court imposed a unified sentence of six years, with three years fixed, and retained jurisdiction. (R., pp.345-51.) Following the period of retained jurisdiction, in December 2015, the district court suspended Linford's sentences and placed her on supervised probation for five years. (R., pp.183-86, 379-82.)

Linford again violated her probation approximately seven months later and, on August 22, 2016, the district court reinstated her on supervised probation for three years (thus shortening the probationary period by approximately 15 months). (R., pp.201-04, 395-98.) Linford subsequently violated her probation a third time and, on June 21, 2017, the district court entered orders revoking Linford's probation and executing the underlying sentences. (R., pp.225-29, 415-19.) Twelve days later, on July 3, 2017, Linford filed a second Rule 35 motion for a reduction of sentence in case number 45358. (R., pp.230-31.) On July 12, 2017, she filed a motion for credit for time served in both cases. (R., pp.234-35, 420-21.) On July 19, 2017, the district court entered orders granting Linford 392 days of credit for time served in case number 45358 and 245 days of credit for time served in case number 45359. (R., pp.236-38, 422-24.) A

hearing on Linford's Rule 35 motion for sentence reduction was held on July 31, 2017, and the district court denied the motion. (R., pp.241-42.) On August 27, 2017, Linford filed a notice of appeal in each case, timely from the district court's order granting her credit for time served in both cases, and also timely from the district court's order denying her Rule 35 motion in case number 45358. (R., pp.243-45, 425-27.)

On appeal, Linford contends that the district court abused its discretion by denying her second Rule 35 motion in case number 45358. She also asserts that the district court erred by granting her motions for credit for time served in both cases.

ARGUMENT

I.

Linford Has Failed To Establish That The District Court Abused Its Discretion By Denying Her Second Rule 35 Motion For A Reduction Of Sentence

"Mindful that [she] provided no new or additional information in support of her Rule 35 motion" for a reduction of sentence, Linford nevertheless asserts that the district court abused its discretion by denying her second Rule 35 motion because she asked "for the district court [to] show her mercy." (Appellant's brief, pp.4-5.) The district court's order denying Linford's Rule 35 motion should be affirmed because the district court lacked jurisdiction to consider it.

Idaho Criminal 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. "A defendant may only file one motion seeking a reduction of sentence." I.C.R. 35(b). The prohibition of successive motions under Rule 35 is a jurisdictional limit. State v. Bottens, 137 Idaho 730, 52 P.3d 875 (Ct. App. 2002).

Linford filed her first Rule 35 motion for a reduction of sentence on August 13, 2013. (R., p.136.) A hearing on the motion was set for November 25, 2013; however, that hearing was

later vacated. (R., pp.6, 140-41.) It does not appear that further action was taken on the motion until May 20, 2015, when a Rule 35 hearing was again set – for June 15, 2015. (R., pp.179-80.) A Rule 35 hearing was actually held on May 26, 2015, at which time the district court entered an order purporting to hold Linford’s Rule 35 motion “in abeyance until further notice by counsel for the Defendant.” (R., pp.181-82.) Although it appears that the district court subsequently reduced Linford’s probationary period from five years to three years upon reinstating her probation in August 2016 – effectively shortening the probationary period by approximately 15 months – the minute entry of the disposition hearing does not indicate that the reduction was pursuant to a Rule 35 request; as such, it does not appear from the record that any further action was taken on Linford’s first Rule 35 motion. (R., pp.183-86, 201-04.) Linford filed a second Rule 35 motion for a reduction of sentence on July 3, 2017. (R., pp.230-31.) Because a defendant may only file one motion seeking a reduction of sentence, Linford’s second Rule 35 motion was an improper successive¹ motion, prohibited by the rule. I.C.R. 35(b); Bottens, 137 Idaho 730, 52 P.3d 875. As such, the district court lacked jurisdiction to consider Linford’s successive Rule 35 motion and the district court’s order denying the motion should be affirmed.

Even if this Court determines that the district court had jurisdiction to consider Linford’s July 3, 2017 Rule 35 motion for sentence reduction, Linford has still failed to establish an abuse

¹ Even if the district court held Linford’s first Rule 35 motion in abeyance and treated Linford’s second Rule 35 motion as an amended Rule 35 motion, the court lacked jurisdiction to consider Linford’s request for sentence reduction because it did not rule on her motion until almost four years after the original motion was filed – over three and one-half years beyond the 120-day filing deadline. (R., pp.136, 241.) 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).

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, Linford acknowledges that she provided no new or additional information in support of her Rule 35 motion for a reduction of sentence. (Appellant’s brief, p.5.) Because Linford presented no new evidence in support of her Rule 35 motion, she failed to demonstrate in the motion that her sentence was excessive. Having failed to make such a showing, she has failed to establish any basis for reversal of the district court’s order denying her Rule 35 motion for a reduction of sentence.

II.

Linford Has Failed To Establish That The District Court Erred By Granting Her Motions For Credit For Time Served In Case Numbers 45358 And 45359

“Mindful that [she] was granted all of the credit for time served that she was due,” Linford nevertheless contends that the district court “erred in entering the order[s]” granting her motions for credit for time served in case numbers 45358 and 45359, “presumably” by “not granting her additional credit for time served.” (Appellant’s brief, pp.5-6.) Linford offers no argument in support of her claim. (Appellant’s brief, pp.5-6.)

“When issues on appeal are not supported by proposition of law, authority, or argument, they will not be considered.” State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) (citing I.A.R. 35; Langley v. State Indus. Special Indem. Fund, 126 Idaho 781, 784, 890 P.2d 732, 735 (1995)). A party waives an issue on appeal if either authority or argument is lacking, not just if both are lacking. Id. Because Linford has not presented, on appeal, any argument to support her claim that the district court erred by granting her credit for time served in case numbers 45358 and 45359 (and in fact acknowledges that she has already been granted all of the credit for time served that she was due), she has waived the issue and this Court should decline to consider it.

Conclusion

The state respectfully requests this Court to affirm the district court’s order denying Linford’s Rule 35 motion for a reduction of sentence in case number 45358 and the district court’s orders granting Linford credit for time served in case numbers 45358 and 45359.

DATED this 26th day of January, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of January, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

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