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### State v. Anderson Respondent's Brief Dckt. 45097

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45097
Plaintiff-Respondent,	)	
	)	Kootenai County Case No.
v.	)	CR-2015-19464
	)	
TRAVIS SHANE ANDERSON,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Must Anderson's appeal be dismissed as untimely?

Anderson's Appeal Should Be Dismissed Because It Is Untimely

Pursuant to a binding Rule 11 plea agreement, Anderson pled guilty to first degree kidnapping and to aggravated battery, the parties stipulated to the imposition of an aggregate unified sentence of 32 years, "with a minimum of 12 years fixed/maximum of 15 years fixed," and Anderson waived his right to appeal his conviction. (R., pp.90-91.) At sentencing, the state recommended an aggregate unified sentence of 32 years, with 15 years fixed, and Anderson's

counsel recommended an aggregate unified sentence of 32 years, with 12 years fixed. (R., pp.105-06.) The district court followed the plea agreement and imposed a unified sentence of 32 years, with 14 years fixed, for first degree kidnapping, and a concurrent sentence of 12 years fixed for aggravated battery. (R., pp.108-09.) The judgment of conviction was entered on August 12, 2016. (R., p.108.) On August 23, 2016, Anderson filed a timely Rule 35 motion for reduction of his sentences, and the district court entered an order denying the motion on October 12, 2016. (R., pp.110-11, 132-33.)

Just over four months later, on February 13, 2017, Anderson filed a motion to clarify credit for time served.<sup>1</sup> (R., pp.134-35.) On March 8, 2017, the district court entered an amended judgment of conviction granting Anderson 261 days of credit for time served. (R., pp.137-39.) Two days later, on March 10, 2017, the district court entered a second amended judgment of conviction, specifying the dates for which Anderson earned the 261 days of credit for time served. (R., pp.140-42.) On April 14, 2017, Anderson filed a notice of appeal timely only from the amended judgments of conviction. (R., p.143.)

Anderson asserts that the 14-year fixed portion of his sentence is excessive because the district court “insufficiently considered all the mitigating factors,” that the 14-year fixed portion of his sentence “violated his Eight Amendment rights” because it “constituted ‘cruel and unusual punishment,’” and that the district court erred by not *sua sponte* ordering a psychological evaluation (despite the fact that, according to the “§ 19-2524 DHW Mental Health Examination Report,” Anderson did not report any current mental health symptoms, there was no indication that a serious mental illness was present, and “no additional mental health assessment [was]

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<sup>1</sup> Anderson’s motion is entitled “*Amended Motion to Clarify Credit for Time Served*”; however, this appears to be a clerical error as it does not appear that an original motion was ever filed. (R., pp.6-8, 134 (emphasis added).)

necessary” (PSI, pp.80-81<sup>2</sup>). (Appellant’s brief, pp.8-26). This Court lacks jurisdiction to consider Anderson’s appellate challenges because Anderson did not timely appeal from the original judgment of conviction.

Idaho Appellate Rule 14(a) requires an appellant to file a notice of appeal within 42 days from the entry of judgment or order from which the appeal is taken. The time for an appeal from any criminal judgment, order or sentence in an action is terminated by the filing of a motion within fourteen (14) days of the entry of the judgment which, if granted, could affect the judgment, order or sentence in the action, in which case the appeal period for the judgment and sentence commences to run upon the date of the clerk's filing stamp on the order deciding such motion. I.A.R. 14(a). The requirement of perfecting an appeal within the 42-day time period is jurisdictional, and any appeal taken after expiration of the filing period must be dismissed. I.A.R. 21 (failure to file a notice of appeal within time limits prescribed by appellate rules is jurisdictional and requires automatic dismissal of the appeal).

The district court entered its judgment of conviction imposing concurrent sentences of 32 years, with 14 years fixed, for first degree kidnapping and 12 years fixed for aggravated battery on August 12, 2016. (R., p.108.) Although Anderson’s Rule 35 motion for reduction of sentence, filed 11 days after the entry of judgment, tolled the time to appeal from the judgment of conviction, the appeal period commenced to run on October 12, 2016 – the date of the clerk’s filing stamp on the district court’s order denying the motion. (R., p.132.) I.A.R. 14(a). Anderson did not file his notice of appeal until April 14, 2017 – 184 days after the district court

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<sup>2</sup> PSI page numbers correspond with the page numbers of the electronic file “ANDERSON, Travis SC #45097 Sealed.pdf.”

entered its order denying Anderson's Rule 35 motion. (R., p.143.) Therefore, Anderson's appeal from the judgment of conviction is not timely.

Anderson did timely file his notice of appeal from the district court's amended judgment of conviction and its second amended judgment of conviction, entered on March 8, 2017 and March 10, 2017, respectively. (R., pp.137-43.) The timeliness of Anderson's appeal from the amended judgments, however, does not confer jurisdiction on this Court to entertain the issues Anderson raises on appeal. For that, Anderson would have had to raise the issues in an appeal timely from the original judgment of conviction that actually *imposed* his sentences. Entry of an amended judgment that is substantively identical to the original judgment does not enlarge the period for filing an appeal, and the appellate court does not have jurisdiction to address matters unaffected by the subsequent judgment. State v. Ciccone, 150 Idaho 305, 308, 246 P.3d 958, 961 (2010); State v. Payan, 128 Idaho 866, 867, 920 P.2d 82, 83 (Ct. App. 1996).

The district court's amended judgments of conviction did not alter Anderson's convictions or sentences; they simply clarified Anderson's entitlement to credit for time served and the dates for which he was entitled to credit. (R., pp.137-42.) As such, the entry of the amended judgments did not enlarge the time in which Anderson was required to file an appeal from the original judgment in order to challenge the length and/or severity of his 14-year fixed sentence or the manner in which it was imposed. Anderson's appeal would only be considered timely if he challenged matters actually altered by the amended judgments of conviction; he has not raised any such issue on appeal. Because Anderson's appeal is not timely, this Court lacks jurisdiction to consider it and it must be dismissed.

Conclusion

The state respectfully requests this Court to dismiss Anderson's appeal as untimely.

DATED this 16th 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 16th day of January, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

PAUL E. RIGGINS  
Riggins Law, P.A.

at the following email address: [rigginlaw@gmail.com](mailto:rigginlaw@gmail.com).

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