

Uldaho Law

## Digital Commons @ Uldaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

5-24-2018

### State v. Bradshaw Appellant's Brief Dckt. 45495

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

#### Recommended Citation

"State v. Bradshaw Appellant's Brief Dckt. 45495" (2018). *Not Reported*. 4528.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/4528](https://digitalcommons.law.uidaho.edu/not_reported/4528)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 45495
Plaintiff-Respondent,	)	
	)	TWIN FALLS COUNTY
	)	NO. CR42-15-11389
v.	)	
	)	
TYLER BRADSHAW,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
<hr/>		

---

**BRIEF OF APPELLANT**

---

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF TWIN FALLS**

---

**HONORABLE G. RICHARD BEVAN  
District Judge**

---

**ERIC D. FREDERICKSEN  
State Appellate Public Defender  
I.S.B. #6555**

**KIMBERLY A. COSTER  
Deputy State Appellate Public Defender  
I.S.B. #4115  
322 E. Front Street, Suite 570  
Boise, Idaho 83702  
Phone: (208) 334-2712  
Fax: (208) 334-2985  
E-mail: documents@sapd.state.id.us**

**ATTORNEYS FOR  
DEFENDANT-APPELLANT**

**KENNETH K. JORGENSEN  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534**

**ATTORNEY FOR  
PLAINTIFF-RESPONDENT**

**TABLE OF CONTENTS**

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL .....	4
ARGUMENT .....	5
The District Court Abused Its Discretion By Failing To Recognize That It Must Decide The Appropriate Sentence, Or That It Had Authority To <i>Sua Sponte</i> Reduce Mr. Bradshaw’s Original Sentence, Notwithstanding The Previous Rule 35 Motion .....	5
A. Introduction .....	5
B. Standard Of Review .....	5
C. The District Court Misperceived Its Discretionary Authority, Granted By Rule 35(b), To Reduce The Sentence <i>Sua Sponte</i> , Notwithstanding The Previously-Filed Rule 35 Motion .....	7
CONCLUSION .....	8
CERTIFICATE OF MAILING .....	9

**TABLE OF AUTHORITIES**

Cases

*State v. Bradshaw*, 2017 Unpublished Opinion No. 519, Supreme Court docket no. 44523  
(Ct. App. July 17, 2017) .....1

*State v. Clontz*, 156 Idaho 787 (Ct. App. 2014).....5, 6, 7

*State v. DuValt*, 131 Idaho 550 (1998).....6

*State v. Hanington*, 148 Idaho 26 (Ct. App. 2009) .....5

*State v. Jensen*, 138 Idaho 941 (Ct. App. 2003) .....5, 7

*State v. Knighton* 143 Idaho 318 (2003) .....5

*State v. Perry*, 150 Idaho 209 (2010) .....6

Statutes

I.C. § 19-2603(2).....5

I.C. § 20-222.....5

Rules

I.C.R. 35 ..... 1, 3, 4, 5, 6, 7

## STATEMENT OF THE CASE

### Nature of the Case

Tyler William Bradshaw appeals from the order of the district court revoking his probation and executing his previously-suspended prison sentence of eight years, with three years fixed. Upon revoking probation, the district court stated, “There was a Rule 35 filed previously that’s been denied. So I will not adjust the three years fixed or the five indeterminate that will be imposed.”

On appeal, Mr. Bradshaw claims that the district court abused its discretion because it failed to perceive that it had *sua sponte* discretion to reduce his sentence, notwithstanding the previously-filed motion.

### Statement of the Facts and Course of Proceedings

Mr. Bradshaw was found guilty of attempted strangulation. (*Bradshaw I*, R., p.197.)<sup>1</sup> The district court imposed a sentence of eight years, with three years fixed, but retained jurisdiction. He filed a Rule 35 motion for reconsideration of his sentence, which was denied by the district court on November 9, 2016. (*Bradshaw I*, R., pp.217, 22.) Thereafter, however, Mr. Bradshaw successfully completed the Idaho Department of Correction’s CAPP “rider” program, receiving praise for his serious attitude and the hard work he put forth to gain the

---

<sup>1</sup> Mr. Bradshaw had a prior appeal from the original judgment of conviction, which was affirmed. See *State v. Bradshaw*, 2017 Unpublished Opinion No. 519, Supreme Court docket no. 44523 (Ct. App. July 17, 2017). The Reporter’s Transcripts and Clerk’s Record from the prior appeal have been augmented into this case by the Supreme Court’s “Order Augmenting Appeal,” filed November 6, 2017. By that same Order, a limited Clerk’s Record and Reporter’s Transcript was prepared. Citations to the record from the prior appeal, No. 44523, are designated as “*Bradshaw I*”; and citations to the limited record prepared for this appeal, No.45495, are designated as “*Bradshaw II*”; *Bradshaw II* includes the Clerks Record, the transcripts of the evidentiary hearing held 9/12/18 and the disposition hearing held 9/20/18; as well as the confidential exhibits containing the APSI.

knowledge and skills that would help him overcome his life-long problem with alcohol. (*Bradshaw II*, Confidential Ex., pp.4-6.) He earned the Department's recommendation for placement on probation, which the district court adopted. (*Bradshaw II*, Confidential Ex., p.6; R., pp.18-21.) Mr. Bradshaw was released on probation on March 15, 2017. Although his family ties were in Twin Falls, he accepted a bus ticket and a month's paid housing in Boise, with the hope of making a fresh start there. (*Bradshaw II*, R., p.102; 9/12/17 Tr., p.8, Ls.15-24.) Confident in his new-found sobriety, he quickly obtained employment, which was of foremost importance to his probation officer; when he lost his first job, he found and worked two more. (*Bradshaw II*, R., pp.109-10; 9/12/17 Tr., p.8, Ls.15-17, p.39, L.22 – p.40, L.5.)

After about a month into his probation, however, Mr. Bradshaw began to struggle; he fell behind in rent and was evicted, and he wound up living at the Boise Rescue Mission at the direction of his probation officer. (*Bradshaw II*, R., p.94.) He got a late start in his rider aftercare, due in part to medical issues, although he diligently worked at that program once he began attending the sessions. (*See Bradshaw II*, 9/12/17 Tr., p.21, Ls.21-14.) He was also hospitalized for a short time and could not meet with his probation officer, which seemed to strain their relationship. (*See Bradshaw II*, R., pp.116-17.) Regrettably, and despite having enjoyed more than a year's sobriety, Mr. Bradshaw allowed himself to fall in with people who were poor influences; on May 10 he went into a bar and drank instead of meeting with his probation officer. (*Bradshaw II*, 9/12/17 Tr., p.16, L.19 – p.17, L.16.) He admitted this mistake to his probation officer and wanted help, but after he missed another meeting – albeit one for which he'd been given less than an hour's notice (*Bradshaw II*, 9/20/17 Tr., p.48, Ls.4-80), his probation officer filed a report of violation and took Mr. Bradshaw into custody. (*Bradshaw II*, R., pp.25-34, 53.)

The State filed a motion seeking to revoke Mr. Bradshaw's probation, alleging ten separate violations. (*Bradshaw II*, R., pp.25-34.) Following an evidentiary hearing, the district court rejected several of the alleged violations but found the majority of them had been proved. (*Bradshaw II*, 9/12/17 Tr., p.64, L.20 – p.71, L.3.) Specifically, the district court found Mr. Bradshaw in violation for associating with a person whose last name he did not know; for not contacting his probation officer when he lost his housing; for drinking at a bar; for not attending court-ordered classes; and for failing to make court-ordered payments. (*Bradshaw II*, 9/12/17 Tr., p.64, L.20 – p.71, L.3.)

At the disposition hearing, the State asked the district court to revoke probation and impose sentence, noting Mr. Bradshaw had since been in a fight with other inmates; Mr. Bradshaw asked the district court to re-instate his probation so that he could attend residential treatment at Victory House. (*Bradshaw II*, 9/20/17 Tr., p.6, Ls.21-25, p.18, Ls.3-16.) Neither party directly addressed the question of the appropriate sentence to impose if the court revoked probation, and neither party explicitly requested or opposed a reduction of the original sentence under Rule 35(b). (*See generally Bradshaw II*, 9/20/17 Tr.) In pronouncing its disposition for this case, however, the district court stated,

I am going to revoke probation, impose your sentence. *There was a Rule 35 filed previously that's been denied. So I will not adjust the three years fixed or the five indeterminate that will be imposed.*

(*Bradshaw II*, 9/20/17 Tr., p.20, Ls.15-18 (emphasis added).)

The district court entered an order revoking probation and executing Mr. Bradshaw's original sentence. (*Bradshaw II*, R., pp.164-68.) Mr. Bradshaw filed a timely appeal from that order. (*Bradshaw II*, R., p.169.)

ISSUE

Did the district court abuse its discretion when, upon revoking Mr. Bradshaw's probation, it decided to deny any reduction of sentence based on the previously filed Rule 35 motion?

## ARGUMENT

### The District Court Abused Its Discretion By Failing To Recognize That It Must Decide The Appropriate Sentence, Or That It Had Authority To *Sua Sponte* Reduce Mr. Bradshaw's Original Sentence, Notwithstanding The Previous Rule 35 Motion

#### A. Introduction

Mr. Bradshaw asserts the district court abused its discretion by failing to recognize that it must decide the appropriate sentence, or that it had authority to *sua sponte* reduce his original sentence, notwithstanding the previous Rule 35 motion. At a probation violation disposition hearing, the trial court considers whether to revoke or continue probation, and, if probation is to be revoked, whether to order the suspended sentence executed or, whether to reduce the sentence. I.C. § 19-2603(2), 20-222; I.C.R. 35(b); *State v. Hanington*, 148 Idaho 26, 27 (Ct. App. 2009). Thus, once a court decides to revoke probation, the issue becomes the appropriate sentence to be executed. *See State v. Clontz*, 156 Idaho 787, 792 (Ct. App. 2014). In short, there is “new decision (explicit or implicit) made by the district court upon revocation of probation.” *State v. Clontz*, 156 Idaho 787, 790 (Ct. App. 2014) (quoting *State v. Jensen*, 138 Idaho 941, 944 (Ct. App. 2003)) (emphasis original in both opinions). This “new decision” takes into account events before and after the original judgment. *See Hanington*, 148 Idaho at 28. Under the terms of Criminal Rule 35(b), “whenever a trial court revokes probation it has authority to *sua sponte* reduce the sentence that was originally imposed.” *Clontz*, 156 Idaho at 792 (quoting *State v. Jensen*, 138 Idaho 941, 944 (Ct. App. 2003)).

#### B. Standard Of Review

The decision of the district court not to reduce a sentence under Rule 35(b) is reviewed for an abuse of discretion. *State v. Knighton* 143 Idaho 318, 319 (2003). In determining whether a trial court has abused its discretion, the sequence of inquiry is:

[W]hether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason.

*State v. Perry*, 150 Idaho 209, 218 (2010).

In Mr. Bradshaw's case, the district court's conclusion – that it would not reduce the sentence *because of* the previously-filed Rule 35 motion – constitutes an abuse of discretion under the first and second prongs of the abuse of discretion standard. The district court misunderstood that it had discretionary authority under Rule 35(b) to *sua sponte* reduce Mr. Bradshaw's original sentence notwithstanding the previous filing and denial of a Rule 35 motion. Alternatively, the district court misunderstood its obligation to determine the *appropriate* sentence to be ordered on revoking probation.

Mr. Bradshaw acknowledges a defendant is generally foreclosed from claiming on appeal that the trial court erred by failing to *sua sponte* reduce a sentence upon revoking probation, since no request for, nor objection to, a reduction is made in the trial court to preserve such a claim. *State v. Clontz*, 156 Idaho 787, 792 (Ct. App. 2014). However, the Idaho Supreme Court recognizes an exception to this rule, where, as here, the issue is raised and decided by the trial court. *See State v. DuValt*, 131 Idaho 550, 554 (1998).

In the present case, after announcing that it would revoke probation and impose sentence, the district court decided that it would not “adjust” the original sentence because there had been a previously-file Rule 35 motion. (*See Bradshaw II*, 9/20/17 Tr., p.20, Ls.15-18.) Thus, while neither party had expressly raised the issue of the court's authority under Rule 35(b) to reduce Mr. Bradshaw's original sentence, the district court raised the issue and decided it, and the issue is therefore properly before this Court. *DuValt*, 131 Idaho at 554.

C. The District Court Misperceived Its Discretionary Authority, Granted By Rule 35(b), To Reduce The Sentence *Sua Sponte*, Notwithstanding The Previously-Filed Rule 35 Motion

Idaho Criminal Rule 35(b) sets forth the authority and mechanism for reducing a sentence whenever the court revokes probation, and provides, “The court may also reduce a sentence on revocation of probation or on motion made within 14 days after the filing of the order revoking probation.” I.C.R. 35(b). Thus, the Rule provides for two distinct opportunities for the court to reduce a sentence if it revokes probation: “on revocation” and “on a motion” timely made. Although the Rule’s contains a limitation that bars *a defendant* from filing more than one motion seeking a reduction of sentence, that limitation does not apply to the court’s authority to reduce the sentence “on revocation.” Thus, under the terms of Idaho Criminal Rule 35(b), “whenever a trial court revokes probation it has authority to *sua sponte* reduce the sentence that was originally imposed.” *Clontz*, 156 Idaho at 792 (quoting *State v. Jensen*, 138 Idaho 941, 944 (Ct. App. 2003)).

In the present case, after announcing that it would revoke probation and impose sentence, the district court decided that it would not reduce the terms of the original sentence *because* there had been a previously-file Rule 35 motion. (*See Bradshaw II*, 9/20/17 Tr., p.20, Ls.15-18.) The district court erroneously concluded that the previously-filed motion precluded either its ability, or its obligation, to consider whether ordering a reduction of sentence was the appropriate sentence to be ordered in this case. Because it misperceived its discretionary authority under Rule 35(b), or else misperceived its obligation to determine an “appropriate sentence” upon revoking probation, the district court abused its discretion.

Accordingly, the district court’s order revoking probation and executing the sentence as originally imposed, should be vacated. This case should be remanded to allow the district court to address the issue under the correct legal standard, recognizing that the court does indeed have

the authority to reduce Mr. Bradshaw's original sentence upon revocation of probation, notwithstanding the grant or denial of a previously-filed motion by the defendant, and that the court has the obligation to decide the appropriate sentence.

CONCLUSION

Mr. Bradshaw respectfully requests that this Court vacate the order revoking probation and imposing his original sentence, and remand the case to the district court to consider whether to exercise its *sua sponte* authority and reduce his original sentence.

DATED this 24<sup>th</sup> day of May, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
KIMBERLY A. COSTER  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24<sup>th</sup> day of May, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TYLER BRADSHAW  
INMATE #70531  
ISCC  
PO BOX 70010  
BOISE ID 83707

G RICHARD BEVAN  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

SAMUEL S BEUS  
TWIN FALLS COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

KAC/eas