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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45495
 Plaintiff-Respondent,)
) Twin Falls County Case No.
 v.) CR42-2015-11389
)
 TYLER WILLIAM BRADSHAW,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

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

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STATEMENT OF THE CASE

Nature Of The Case

Tyler William Bradshaw appeals from the district court's order executing his sentence after he violated probation.

Statement Of The Facts And Course Of The Proceedings

The state charged Bradshaw with, and a jury convicted him of, attempted strangulation. (R., pp. 19, 82-83.) The district court sentenced him to eight years with three years determinate and retained jurisdiction. (Id.) The district court thereafter suspended the sentence and placed Bradshaw on probation. (R., pp. 18-22.)

A little over two months later the state moved to revoke Bradshaw's probation for failing complete his community service, associating with "someone who's last name he did not know," failing to report to his probation officer on three different dates, leaving his sober living residency without permission, failing to maintain employment by being fired for missing work, drinking alcohol, failing to appear at his domestic violence intake and failing to enroll in aftercare, absconding supervision, failing to make payments on his financial obligations, and failing to pay his supervision fee. (R., pp. 25-34.) After an evidentiary hearing the district court found Bradshaw in violation on most of the alleged violations. (R., pp. 139-40.) The district court then revoked Bradshaw's probation and executed his sentence. (R., pp. 164-67, 184-87.) Bradshaw timely appealed. (R., pp. 169-72.)

ISSUE

Bradshaw states the issue on appeal as:

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?

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Has Bradshaw failed to show that the district court abused its discretion by imposing his sentence without reducing it?

ARGUMENT

Bradshaw Has Failed To Show That The District Court Abused Its Discretion

A. Introduction

After executing Bradshaw's sentence, 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 years indeterminate that will be imposed." (Tr., p. 20, Ls. 16-18.) On appeal Bradshaw argues the district court abused its discretion by not recognizing that it had authority to reduce his sentence. (Appellant's brief, pp. 5-8.) This argument fails because Bradshaw has failed to show that the district court had jurisdiction to grant its own motion for reduction of sentence after it had denied Bradshaw's previously filed motion for reduction of sentence. Even if the court had such jurisdiction, Bradshaw has failed to show on the record that the district court rejected a reduction in sentence because it believed it did not have authority to reduce the sentence.

B. Standard Of Review

"[A] lower court's decision to grant or deny a Rule 35 motion will not be disturbed in the absence of an abuse of discretion." State v. Hanson, 150 Idaho 729, 734, 249 P.3d 1184, 1189 (Ct. App. 2011).

C. Bradshaw Has Failed To Show The District Court Had Jurisdiction To Sua Sponte Reduce The Sentence

"The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence." State v. Morgan, 153 Idaho 618, 622, 288 P.3d 835, 839 (Ct. App. 2012). Rule 35 provides that "no defendant may file more than one

motion seeking a reduction of sentence under this Rule.” I.C.R. 35. This rule “clearly prohibits the filing of more than one motion for a reduction of sentence.” State v. Heyrend, 129 Idaho 568, 572, 929 P.2d 744, 748 (Ct. App. 1996). A district court lacks jurisdiction to consider a successive request for leniency under Rule 35. State v. Bottens, 137 Idaho 730, 732–33, 52 P.3d 875, 877–78 (Ct. App. 2002).

Bradshaw argues that, despite his prior Rule 35 motion requesting leniency and the district court’s lack of jurisdiction to entertain another motion from him, the district court had jurisdiction and discretion to reduce his sentence on its own motion. (Appellant’s brief, pp. 5-8.) The cases he cites, however, do not support his argument. In State v. Hanington, 148 Idaho 26, 27, 218 P.3d 5, 7 (Ct. App. 2009) (cited at Appellant’s brief, p. 5), the Idaho Court of Appeals recognized that the authority to grant a reduction of sentence upon revocation of probation “is authorized under Idaho Criminal Rule 35.”

In State v. Clontz, 156 Idaho 787, 792, 331 P.3d 529, 534 (Ct. App. 2014) (cited Appellant’s brief, pp. 5-7), the Idaho Court of Appeals held that fundamental error standards “preclude an appeal challenging the trial court’s failure to sua sponte reduce a sentence upon relinquishment of jurisdiction or revocation of probation.” Again, the legal authority for such a reduction stemmed from Rule 35. Id. at 790, 331 P.3d at 532 (“by terms of Idaho Criminal Rule 35, whenever a trial court revokes probation it has authority to sua sponte reduce the sentence that was originally pronounced”) (quoting State v. Jensen, 138 Idaho 941, 944, 71 P.3d 1088, 1091 (Ct. App. 2003)).

Finally, Bradshaw argues there is an “exception” to the rule that failure to *sua sponte* reduce a sentence is not reviewed on appeal where the question of reduction is “raised and decided by the trial court.” (Appellant’s brief, p. 6 (citing State v. DuVal, 131

Idaho 550, 554, 961 P.2d 641, 645 (1998)).) Although issues decided by the trial court are reviewable, DuValt, 131 Idaho at 553, 961 P.2d at 644, this rule of appellate review is irrelevant to whether the district court had jurisdiction to reduce the sentence.

Bradshaw has shown no instance where a court had jurisdiction to do *sua sponte* what it lacked jurisdiction to do by motion. Because the jurisdiction to reduce a sentence stems from Rule 35, and because Rule 35 does not confer jurisdiction to consider successive motions, the district court lacked jurisdiction to consider a successive motion whether the motion was made by Bradshaw or the district court *sua sponte*.

Alternatively, even if the district court had jurisdiction, Bradshaw has failed to show an abuse of discretion. Bradshaw argues that the district court did not understand that it had discretion. (Appellant's brief, pp. 5-8.) The record does not support this argument. The district court, after executing the sentence, stated, "There was a Rule 35 filed previously that's been denied. So I *will not* adjust the three years fixed or the five years indeterminate that will be imposed." (Tr., p. 20, Ls. 16-18 (emphasis added).) The district court's phrasing that it "will not" reduce the sentence is consistent with an understanding it had discretion. Had the court been inclined to reduce but concluded it lacked the authority to do so it would have said that it "cannot" reduce the sentence. Bradshaw has failed to demonstrate that the district court did not believe it could have reduced the sentence had it desired to do so, and has therefore failed to show any abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the district court's order executing Bradshaw's sentence.

DATED this 14th day of June, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of June, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd