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### State v. Bogan Respondent's Brief Dckt. 45565

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45565
Plaintiff-Respondent,	)	
	)	Bannock County Case No.
v.	)	CR-2015-8827
	)	
CRAIG BOGAN,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Bogan failed to establish that the district court erred by denying his motion to reconsider the denial of his Rule 35 motion for reduction of sentence?

Bogan Has Failed To Show Error In The District Court’s Denial Of His Successive Rule 35 Motion

Bogan pled guilty to aggravated battery and the district court imposed a unified sentence of eight years, with three years fixed. (44771 R., pp.202-05.) Bogan appealed and the Idaho Court of Appeals affirmed his conviction and sentence. State v. Bogan, 2017 Unpublished Opinion No. 657, Docket No. 44771 (Idaho App., November 30, 2017). Bogan filed a timely

Rule 35 motion for a reduction of sentence, which the district court denied. (44771 R., pp.216-17; 45565 R., pp.28-29.) Bogan subsequently filed a motion to reconsider the denial of his Rule 35 motion, and the district court denied the motion to reconsider. (45565 R., pp.30-32, 58-59.) Bogan filed a notice of appeal timely only from the district court's order denying his motion to reconsider the denial of his Rule 35 motion. (45565 R., pp.60-63.)

“[M]indful of the holdings in *State v. Flores*, 162 Idaho 298 (2017), that the Idaho Rules of Criminal Procedure have no rule similar to I.R.C.P. 11.2(1)'s motion for reconsideration, and of the Court of Appeal's decision in *State v. Bottens*, 137 Idaho 730, 732-33 (2002), that a motion to reconsider the denial of a Rule 35 motion is an improper successive motion prohibited by Rule 35,” Bogan nevertheless asserts that “the district court had jurisdiction to consider his request for reconsideration based on his attorney's inadvertence, and that the district court abused its discretion by denying his [successive] motion for Rule 35 relief,” in light of the his wife's health and financial problems. (Appellant's brief, pp.1-2, 4-8.) Bogan's claims fail because the district court lacked jurisdiction to consider Bogan's motion to reconsider the denial of his Rule 35 request for leniency.

Idaho Criminal Rule 35 provides that “[a] defendant may only file one motion seeking a reduction of sentence.” I.C.R. 35(b). In *State v. Bottens*, 137 Idaho 730, 52 P.3d 875 (Ct. App. 2002), the Idaho Court of Appeals held that “a motion to reconsider the denial of a Rule 35 motion is an improper successive motion and is prohibited by Rule 35. We hold that the prohibition of successive motions under Rule 35 is a jurisdictional limit.”

On appeal, Bogan acknowledges that a motion to reconsider the denial of a Rule 35 motion is an improper successive motion prohibited by Rule 35; however, he asserts that “it is unclear that the Court of Appeals intended its holding in *Bottens* to preclude a defendant from

seeking relief on the grounds of his counsel's inadvertence." (Appellant's brief, pp.4-5 (citing I.R.C.P. 60(b)).) To the contrary, the Idaho Court of Appeals addressed a very similar issue in Bottens, wherein the trial court determined that it would consider Bottens' motion to reconsider the denial of his Rule 35 motion for sentence reduction on the merits because:

“...it would be more expeditious than to hear what would most likely be a post-conviction relief petition for ineffective assistance of counsel because of a mix-up in transition between the public defender's office and [Bottens' private attorney's] office, as a result of which the motion lay fallow. And for that reason, because it's a matter of discretion and notwithstanding the language of the rule, if the Court nevertheless proceeds to hear it on the merits, it will not deem that an abuse of discretion providing there's a-a just basis for doing so.”

Bottens at 732, 52 P.3d at 877. The Idaho Court of Appeals specifically disagreed with the trial court's determination in Bottens, holding that – even under circumstances involving defense counsel's inadvertence – the trial court did not have jurisdiction to hear Bottens' motion to reconsider the denial of his Rule 35 motion, and: “Today we make explicit that a motion to reconsider the denial of a Rule 35 motion is an improper successive motion and is prohibited by Rule 35.” Id. at 732–33, 52 P.3d at 877–78. As such, it is clear that the Idaho Court of Appeals' holding in Bottens was indeed intended to preclude a defendant from seeking Rule 35 relief on the grounds of his counsel's inadvertence. Because the district court lacked jurisdiction to consider Bogan's successive Rule 35 motion, the district court's order denying the motion to reconsider must be affirmed.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Bogan's motion to reconsider the denial of his Rule 35 motion for reduction of sentence.

DATED this 29th day of May, 2018.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of May, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Kenneth K. Jorgensen  
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