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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 45495
)	
v.)	TWIN FALLS COUNTY
)	NO. CR42-15-11389
)	
TYLER BRADSHAW,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY 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**

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**ATTORNEY FOR
PLAINTIFF-RESPONDENT**

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STATEMENT OF THE CASE

Nature of the Case

William Bradshaw appeals from the district court's order revoking his probation and executing his previously-suspended prison sentence of eight years, with three years fixed. After announcing that it would revoke probation, the district court ruled, "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." (Tr., p.20, Ls.16-18) (emphasis added).

The parties dispute the significance of this ruling. Mr. Bradshaw argues that the district court failed to correctly perceive that on revocation it had *sua sponte* discretion to reduce his sentence under Rule 35, notwithstanding the previously-filed motion; or alternatively, the court failed to perceive its obligation to determine the appropriate sentence to be executed and the scope of the information to be considered. (Appellant's Brief, pp.5-8.) This Reply Brief is necessary to respond to the State's arguments and show that Rule 35(b)'s limitation that "a *defendant* may file only one motion for a reduction of sentence," applies to motions filed by a defendant, and does not apply to court's independent *sua sponte* authority to reduce a sentence, which is expressly provided by the Rule.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Bradshaw's Appellant's Brief.

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 Failed To Recognize It Had Authority To *Sua Sponte* Reduce Mr. Bradshaw's Original Sentence Notwithstanding The Previous Rule 35 Motion, And Failed To Recognize That The Scope Of That Authority Required That It Consider Events During Probation

A. Introduction

After announcing that it would revoke 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.” (Tr., p.20, Ls.16-18.) It is clear from this phrasing that the district court perceived that the previously-filed Rule 35 motion precluded it from reducing Mr. Bradshaw’s sentence. Whether because it believed it lacked discretionary authority to consider reducing the sentence, or because it believed no information or events subsequent to denial of the motion would or could be taken into account, the district court’s perception of its authority is inconsistent with the law. In either case, the district court failed to recognize its discretionary authority, representing an abuse of its discretion. The State’s arguments to the contrary are unavailing and should be rejected.

B. Rule 35(b) Grants The District Court Authority To Reduce A Sentence *Sua Sponte* On Revocation Of Probation Independent Of Whether The Defendant Has Filed A Motion

The State argues that because Rule 35 bars a defendant from filing successive motions for a reduction of sentence, the district court lacked jurisdiction to consider a reduction of sentence under its own *sua sponte* authority granted by the Rule. (Resp. Brief., p.5.) Contrary to the State’s argument, Rule 35(b)’s explicit limitation that “a *defendant* may only file one motion” places no such limit on the trial court.

When deciding the meaning of a court rule, a court must “begin with an examination of the literal words of the rule and give the language its plain, obvious and rational meaning.”

Hoffer v. Shappard, 160 Idaho 868, 876 (2015). Idaho Criminal Rule 35(b),¹ states

Within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction, a motion may be filed to correct or reduce a sentence and the court may correct or reduce the sentence. *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. Motions are considered and determined by the court without additional testimony and without oral argument, unless otherwise ordered. *A defendant may only file one motion* seeking a reduction of sentence.

I.C.R. 35(b) (as amended in July 1, 2017) (emphasis added).

The obvious and plain meaning of the term “the court” in the provision “the court may also reduce a sentence on revocation” is the court; the plain and obvious meaning of the term “defendant” in the limitation “A defendant may only file one motion” is the defendant, and does not include the court. Thus, given its plain meaning, the limitation that “a defendant may file only one motion” does not apply to the Rule’s specific grant of authority to the court to reduce a sentence *sua sponte*. The plain language demonstrates the intent to bar *defendants* from filing more than one motion. The Rule cannot be read to place any limitation on the number of times a court may, on revocation, consider or order a reduction of a sentence.

The State’s argument to the contrary, and its position that the limitation deprives the trial court of jurisdiction, is without merit and should be rejected.

This interpretation is also supported by the difference between revocation - when the trial court orders the execution of a prison sentence after what could be years on probation - and a request to reconsider what is typically a recently-decided sentencing disposition. By granting the

¹ The district court revoked Mr. Bradshaw’s probation on September 20, 2017. This is the version of the Rule in effect at that time.

trial court the authority to reduce a sentence, independent of a motion by the defendant, the Rule allows the court to determine the appropriate sentence to be executed, taking into account events while the defendant was on probation. *See State v. Clontz*, 156 Idaho 787, 792 (Ct. App. 2014) (once a court decides to revoke probation, the issue becomes the appropriate sentence to be executed). As the Idaho Court of Appeals recognized in *State v. Hanington*, the information that the trial court considers, and that the appellate court considers on review, encompasses events *after* the original judgment, and while the defendant was on probation. 148 Idaho 26, 28 (Ct. App. 2009).

1. The District Court Misperceived The Scope Of Its Discretionary Authority On Revocation Of Probation

The district court, after deciding to revoke probation, 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.) Whether because it believed it lacked discretionary authority to consider reducing the sentence, or because it believed no information or events subsequent to denial of the motion would or could be taken into account, the district court’s perception of its authority is inconsistent with the law. As stated above, once a court decides to revoke probation, the issue becomes the appropriate sentence to be executed. *Clontz*, 156 Idaho 787, 792 (Ct. App. 2014). And, as argued in Appellant’s Brief, at pp.6-7, the scope of the information to be considered in making that determination encompasses events after the original judgment, and while the defendant was on probation. *State v. Hanington*, 148 Idaho 26, 28 (Ct. App. 2009).

Here, the district court had discretionary authority to consider a reduction of sentence, notwithstanding the prior filing of a Rule 35 motion, and the denial of that motion did not prevent the court from considering subsequent events, including those while Mr. Bradshaw was on probation. The district court misperceived its discretionary authority – its existence and/or scope – representing an abuse of discretion.

CONCLUSION

For the reasons stated here and in his Appellant’s Brief, Mr. Bradshaw respectfully asks this Court to remand his case to the district court with instructions that it consider a reduction of his sentence.

DATED this 24th day of July, 2018.

/s/ Kimberly A. Coster
KIMBERLY A. COSTER
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July, 2018, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, electronically as follows:

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CRIMINAL DIVISION
Delivered via e-mail to: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

KAC/eas