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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46061
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR-42-16-4551
)	
JESSICA MAY SPETH,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Speth failed to establish that the district court abused its discretion by denying her Rule 35 motion for reconsideration of its decision to relinquish jurisdiction?

Speth Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Pursuant to a plea agreement, Speth pled guilty to grand theft and the state dismissed a charge of malicious injury to property, agreed to not file a persistent violator enhancement, and also agreed to recommend a four-year period of supervised probation “in anticipation of Drug Court,” with an underlying unified sentence of eight years, with three years fixed. (R., pp.48,

59.) As part of the plea agreement, Speth waived her rights to: “file a Rule 35 Motion regarding the initial Judgment (except as to an illegal sentence)” and to “appeal any issues in this case, including all matters involving the plea or the sentence and any rulings by the court,” unless the district court exceeded the three-year determinate portion of the state’s sentencing recommendation and/or the recommendation for probation. (R., pp.52, 59 (parenthetical notation and emphasis original).) The district court followed the plea agreement and – on November 18, 2016 – imposed a unified sentence of eight years, with three years fixed, suspended the sentence, and placed Speth on supervised probation for four years with the condition that she participate in Drug Court. (R., pp.78-91.)

On November 23, 2016, an order transferring Speth “out of Drug Court and back to the District Court” was filed, indicating that Speth “has decided not to participate in Drug Court.” (R., pp.92-93.) On May 5, 2017, Speth’s probation officer filed a report of violation alleging that Speth had violated the conditions of her probation by failing to report for supervision as instructed on four separate occasions, failing to provide a valid physical address and changing residences without permission on multiple occasions, and avoiding and/or absconding supervision. (R., pp.99-102.) Pursuant to an “agreement regarding disposition,” Speth admitted the allegations and the parties stipulated to a period of retained jurisdiction. (Tr., p.6, L.4 – p.7, L.6; R., pp.106, 108.) Consistent with the agreement, the district court revoked Speth’s probation, executed her underlying sentence, and retained jurisdiction. (R., pp.107-12.) Approximately six months later, on March 9, 2018, the district court relinquished jurisdiction. (R., pp.115-16.)

On April 18, 2018, Speth filed a Rule 35 motion for reconsideration, requesting “a chance to complete [her] rider and have [her] review.” (R., pp.117-22.) The district court denied

the motion, noting that State v. Flores, 162 Idaho 298, 396 P.3d 1180 (2017), “makes it very clear there is no such thing as a motion to reconsider relinquishment of jurisdiction and courts have no authority to reinstate jurisdiction.” (R., pp.149-54.) Speth filed a notice of appeal on May 9, 2018, timely from the district court’s order denying her Rule 35 motion for reconsideration. (R., pp.159-63.)

“Mindful that the district court did not have the lawful authority to grant the motion,” Speth nevertheless asserts that the district court abused its discretion by denying her Rule 35 motion to reconsider because she has a “seizure disorder,” she completed certain classes while on her rider, and one of the two DOR’s that she incurred while on her rider was later dismissed. (Appellant’s brief, pp.1, 3-4; PSI, p.45;¹ R., pp.123, 141-46.) Speth has failed to establish any basis for reversal of the district court’s order denying her Rule 35 motion to reconsider.

Pursuant to Idaho Criminal Rule 35, a motion may be filed to correct or reduce a sentence and the court may correct or reduce the sentence within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction, or within 14 days of the entry of the order revoking probation. I.C.R. 35(b). “Rule 35 does not create a general basis for requesting reconsideration of an order or a judgment in the criminal context.” Flores, 162 Idaho at 301, 396 P.3d at 1183. Rule 35 instead narrowly operates to permit the correction or reduction of criminal sentences “in certain instances.” Id.

Speth’s Rule 35 motion to reconsider was timely only from the district court’s order relinquishing jurisdiction. (R., pp.115, 117.) In Speth’s letter to the district court – attached to

¹ PSI page numbers correspond with the page numbers of the electronic file “Confidential Documents on Appeal Appeal Volume 1.pdf.”

her motion to reconsider – she requested “a chance to complete [her] rider and have [her] review.” (R., p.122.) On appeal, Speth acknowledges that the district court did not have the authority to reinstate jurisdiction after it had relinquished jurisdiction. (Appellant’s brief, pp.1, 3-4); see also Flores, 162 Idaho at 301-02, 396 P.3d at 1183-84 (Rule 35 is inapplicable to a request for jurisdiction to be reinstated because such a request does not constitute a correction or reduction of a criminal sentence). Because the district court lacked the authority to reinstate jurisdiction, the court did not err by denying Speth’s Rule 35 request to be placed back in the retained jurisdiction program so she could complete her rider. Speth has therefore failed to establish any basis for reversal of the district court’s order denying her Rule 35 request for the district court to reinstate jurisdiction, and the district court’s order denying Speth’s motion to reconsider its order relinquishing jurisdiction should be affirmed.

Even if Speth’s Rule 35 motion to reconsider was considered a Rule 35 request for a *reduction* of her sentence, she has failed to establish an abuse of discretion in the district court’s denial of the motion. If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Speth must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Speth has failed to satisfy her burden.

In support of her Rule 35 motion for reconsideration, Speth provided medical status reports indicating that her previously existing medical issues persisted during her period of retained jurisdiction, certificates demonstrating that she completed certain classes while on her rider, information showing that one of the DOR’s she incurred while on her rider was later

dismissed, and a letter to the court in which she complained that her case manager “didn’t do her job” and “did not like [Speth].” (R., pp.120-48.) Information with respect to Speth’s medical issues and her participation in and/or completion of some of her rider programming was before the district court at the time that it relinquished jurisdiction. (R., pp.67, 72-73; PSI, pp.14-15, 44-46, 50, 53.) Any information that Speth wished to provide to the court with respect to her accomplishments and/or difficulties during her rider was likewise available at the time that the district court relinquished jurisdiction, and rider staff “offered [Speth] an opportunity to submit a written statement to the court” detailing such information, but Speth “declined” to do so. (PSI, p.48.)

The only “new” information Speth submitted in support of her Rule 35 motion was the Disciplinary Transmittal Form from the Idaho Department of Correction stating that one of the DOR’s that Speth incurred while on her rider was dismissed after the district court relinquished jurisdiction. (R., p.123.) However, as the district court stated in its order denying Speth’s motion to reconsider its order relinquishing jurisdiction, “courts have no authority to reinstate jurisdiction,” and, “[e]ven if the Court had authority to reconsider relinquishment, [the] motion would be denied. The APSI chronicled a failed rider where the Defendant made minimal effort and had disciplinary issues other than the subsequently dismissed DOR concerning her helmet.” (R., pp.152-53.) Indeed, Speth incurred corrective actions throughout her rider, for conduct including bartering, sleeping during program hours and then lying to staff, being out of area, being in an unauthorized area, swearing at and being disrespectful toward staff, not showing up for a required class, and failing to wear her identification badge, and she also incurred a second DOR – which was not dismissed – for disobedience to orders. (PSI, pp.45, 49, 51-54.) Rider staff reported that Speth “displayed a negative attitude and was defiant from the very beginning,”

she “often makes excuses” and “plays the victim in most situations,” she “appear[ed] to have absolutely no desire to work on herself and her problems,” and she only did “the absolute bare minimum” that was required to pass her classes. (PSI, pp.46-48.) SBWCC reported that Speth’s “facilitators as well as [her] case manager are concerned that she is not ready to commit and make the changes necessary to be successful.” (PSI, p.48.)

The district court’s decision to deny Speth’s request for a reduction of sentence was appropriate in light of Speth’s overall poor performance on her rider. That one of the DOR’s Speth incurred during her rider was later dismissed does not show that she was entitled to a reduction of sentence, particularly given her history of disregarding the law and her ongoing rule violations during her period of retained jurisdiction. (PSI, pp.5-10, 45.) Given any reasonable view of the facts, Speth has failed to establish an abuse of discretion in the district court’s denial of her Rule 35 motion to reconsider.

Conclusion

The state respectfully requests this Court to affirm the district court’s order denying Speth’s Rule 35 motion to reconsider.

DATED this 31st day of December, 2018.

/s/ Lori A. Fleming
LORI A. FLEMING
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VICTORIA RUTLEDGE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of December, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Lori A. Fleming
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