

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

COLLEEN D. ZAHN  
Deputy Attorney General  
Chief, Criminal Law Division

KENNETH K. JORGENSEN  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	Nos. 47613-2019, 47614-2019,
	)	47615-2019, & 47616-2019
	)	
v.	)	Ada County Case Nos.
	)	CR01-18-40580, CR01-18-40807,
ALLEN RAY FREEMAN, JR.,	)	CR01-18-45228 & CR01-18-49629
	)	
Defendant-Appellant.	)	
	)	RESPONDENT’S BRIEF
	)	

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ISSUES

1. Does this Court lack jurisdiction to consider the district court’s orders relinquishing jurisdiction because Freeman did not file an appeal timely from the entry of those orders?
2. Has Freeman failed to show any basis for reversal of the district court’s orders denying his Rule 35 motions for reduction of his sentences?

STATEMENT OF THE CASE

The state charged Freeman with: grand theft by possession of stolen property, possession of forged checks, possession of marijuana, possession of drug paraphernalia, and possession of a

mutilated, altered or revoked driver's license in Ada County case number CR01-18-40580 ("the first case"); grand theft in Ada County case number CR01-18-40807 ("the second case"); four counts of grand theft, two counts of forgery, and three counts of petit theft in Ada County case number CR01-18-45228 ("the third case"); and grand theft by unauthorized control, burglary, six counts of grand theft by possession of stolen property, and misappropriation of personal identifying information in Ada County case number CR01-18-49629 ("the fourth case"). (47613 R., pp. 20-21; 47614 R., pp. 18-19; 47615 R., pp. 20-22, 24-26; 47616 R., pp. 25-28.) Pursuant to a global plea agreement, Freeman pled guilty to possession of forged checks in the first case; to grand theft in the second case; to one count of grand theft and one count of forgery in the third case; and to one count of grand theft, burglary, and misappropriation of personal identifying information in the fourth case. (47613 R., pp. 22, 31-33; 47614 R., pp. 23-29; 47615 R., pp. 27, 31, 37-39; 47616 R., pp. 33, 39-43.) In exchange, the state dismissed all of the remaining charges and agreed to not file a persistent violator enhancement in any of the four cases. (Id.) The district court imposed a unified sentence of five years, with two years fixed, for misappropriation of personal identifying information, and concurrent unified sentences of 10 years, with three years fixed, for all of the other charges, and retained jurisdiction. (47613 R., pp. 43-47; 47614 R., pp. 35-38; 47615 R., pp. 44-48; 47616 R., pp. 49-54.) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (47613 R., pp. 50-53; 47614 R., pp. 40-42; 47615 R., pp. 50-53; 47616 R., pp. 56-59.) The orders relinquishing jurisdiction were entered on October 15, 2019. (Id.)

Thirty-eight days later, on November 22, 2019, Freeman filed a Rule 35 motion for reduction of sentence in all four cases. (47613 R., pp. 54-58; 47614 R., pp. 43-47; 47615 R., pp. 54-58; 47616 R., pp. 60-64.) The district court entered orders denying the motions on December

2, 2019. (47613 R., pp. 85-87; 47614 R., pp. 74-76; 47615 R., pp. 85-87; 47616 R., pp. 91-93.) Freeman subsequently filed notices of appeal that were timely only from the district court's orders denying his Rule 35 motions. (47613 R., pp. 88-91; 47614 R., pp. 77-80; 47615 R., pp. 88-91; 47616 R., pp. 94-97.)

Freeman contends that "the district court abused its discretion when it relinquished jurisdiction" and "when it subsequently refused to reduce his excessive sentences" pursuant to his Rule 35 motions. (Appellant's brief, pp. 5-6.)

## ARGUMENT

### I.

#### This Court Lack Jurisdiction To Consider Freeman's Challenges To The District Court's Orders Relinquishing Jurisdiction Because Freeman Did Not File An Appeal Timely From The Entry Of Those Orders

##### A. Introduction

Freeman asserts that the district court abused its discretion by relinquished jurisdiction in light of his "explanation" for the corrective action he incurred for theft while on his rider. (Appellant's brief, pp. 5-9.) Freeman failed to file his notices of appeal within the time prescribed by Idaho Appellate Rule 14(a) and, as such, this Court lacks jurisdiction to review the district court's orders relinquishing jurisdiction.

##### B. Standard Of Review

Idaho Appellate Rule 14(a) requires an appellant to file a notice of appeal within 42 days from the entry of judgment or order from which the appeal is taken. I.A.R. 14(a). A motion for reduction of sentence can extend the time for filing an appeal, but only if the motion is filed within 14 days of the entry of judgment. State v. Thomas, 146 Idaho 592, 593, 199 P.3d 769, 770 (2008); State v. Yeaton, 121 Idaho 1018, 1019, 829 P.2d 1367, 1368 (Ct. App. 1992) (citing

I.A.R. 14). The failure to timely file a notice of appeal within the time limits prescribed by the appellate rules is a jurisdictional defect and requires automatic dismissal of the appeal. I.A.R. 21; Smith v. Smith, 164 Idaho 46, 52, 423 P.3d 998, 1004 (2018).

C. Freeman's Appeals From The District Court's Orders Relinquishing Jurisdiction Are Untimely

The district court entered its orders relinquishing jurisdiction in these cases on October 15, 2019. (47613 R., p. 50; 47614 R., p. 40; 47615 R., p. 50; 47616 R., p. 56.) Freeman did not file his notices of appeal until December 3, 2019 – 49 days after the entry of the orders relinquishing jurisdiction.<sup>1</sup> (47613 R., pp. 88-91; 47614 R., pp. 77-80; 47615 R., pp. 88-91; 47616 R., pp. 94-97.) Freeman's Rule 35 motions for reduction of sentence, filed 38 days after the entry of the orders relinquishing jurisdiction (47613 R., p. 54; 47614 R., p. 43; 47615 R., p. 54; 47616 R., p. 60), did not extend the time for appealing from those orders. I.A.R. 14(a); Thomas, 146 Idaho at 594, 199 P.3d at 771; Yeaton, 121 Idaho at 1019, 829 P.2d at 1368. Therefore, this Court lacks jurisdiction to review the orders relinquishing jurisdiction. Id.

II.

Freeman Has Show Any Basis For Reversal Of The District Court's Orders Denying His Rule 35 Motions For Reduction Of Sentence

A. Introduction

Freeman asserts that the district court abused its discretion when it denied his Rule 35 motions for reduction of sentence, in light of his “clarification” of the incident for which he incurred an infraction for theft during his rider. (Appellant's brief, pp. 5-9.) Freeman has failed to establish any basis for reversal of the district court's orders denying his Rule 35 motions.

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<sup>1</sup> In case number CR01-18-49629, Freeman filed his notice of appeal on December 4, 2019 – 50 days after the district court entered its order relinquishing jurisdiction. (47616 R., pp. 56, 94.)

B. Standard Of Review

If a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013) (citing State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)). A Rule 35 motion “does not function as an appeal of a sentence.” Id. Thus, “[w]hen presenting a Rule 35 motion, the defendant 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. Absent the presentation of new evidence, “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence.” Id. at 729-30, 316 P.3d at 645–46; State v. Carter, 157 Idaho 900, 903, 341 P.3d 1269, 1272 (Ct. App. 2014).

C. Freeman Failed To Show His Sentences Were Excessive In Light Of New Information

Freeman provided no “new” information in support of his Rule 35 motions for reduction of sentence. He merely reminded the district court of the work and programs he completed while on his rider, that he had support from family, that he was placed on probation in a Canyon County case following his rider, and that his explanation for taking the food – which resulted in his infraction for theft – was that it “was a practice allowed by the kitchen guard.” (10/9/19 Tr., p. 43, Ls. 7-8; 47613 R., pp. 54-84; 47614 R., pp. 43-73; 47615 R., pp. 54-84; 47616 R., pp. 60-90.) All of this information was before the district court at the time that it relinquished jurisdiction (10/9/19 Tr., p. 42, L. 23 – p. 43, L. 13; p. 45, Ls. 14-23; APSI, pp. 5-8, 10-15<sup>2</sup>); as such, it was not “new” information.

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<sup>2</sup> APSI page numbers correspond with the page numbers of the electronic file “Conf.Docs.-Freeman(49629).pdf.”

Because Freeman presented no new evidence in support of his Rule 35 motions, he failed to demonstrate in the motion that his sentences were excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's orders denying his Rule 35 motions.

CONCLUSION

The state respectfully requests this Court to dismiss Freeman's appeals from the district court's orders relinquishing jurisdiction as untimely, and to affirm the district court's orders denying Freeman's Rule 35 motions for reduction of sentence.

DATED this 19th day of August, 2020.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of August, 2020, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us).

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