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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
Email: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48374-2020
Plaintiff-Respondent,)	
)	
v.)	Kootenai County Case No.
)	CR-2017-6184
)	
JUSTIN ROY BOOTH,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Justin Roy Booth failed to show that the district court abused its discretion by denying his Rule 35 motion?

ARGUMENT

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

A. Introduction

In October of 2016, Justin Roy Booth and David Earl Hutto abducted William “Bo” Kirk from his driveway. (46454 PSI, p. 625.¹) Booth and Hutto shot Bo eight times in the back at a

¹ Docket 46454 is from the prior appeal in this case.

remote location, and used his financial cards to withdraw money from his bank accounts. (46454 PSI, pp. 625-626.) After killing Bo, Booth and Hutto burned his truck. (46454 PSI, p. 625-626.) Authorities found Bo laying partially on his back, with his hands zip-tied behind his back down an embankment off of a road. (46454 PSI, p. 625.)

The state charged Booth with one count of murder in the first degree, one count of kidnapping in the second degree, one count of robbery, one count of arson in the first degree, and one count of unlawful possession of a firearm. (46454 R., pp. 186-188.) Booth pleaded guilty to murder in the first degree and robbery, and the district court sentenced him to two concurrent terms of life, with thirty years determinate. (46454 R., pp. 486-489, 495, 534-537.) The district court's judgment was filed on July 31, 2018. (46454 R., p. 534.) In September of 2018, Booth appealed from the judgment and sentence. (46454 R., pp. 544-546.) The Idaho Court of Appeals affirmed. (R., pp. 26-32.)

Booth also filed a Rule 35 motion on November 28, 2018, which was 120 days after entry of judgment. (46454 R., pp. 555-556.) The district court denied Booth's Rule 35 motion on September 1, 2020, more than two years after entry of judgment, and Booth filed another appeal. (R., pp. 37, 39-41.)

On appeal, Booth argues that the "30-year fixed portion of the sentence is excessive," and that "[t]his Court should reduce the fixed time to 15 years." (Appellant's brief, p. 6.) Booth has failed to show that the district court had jurisdiction to grant his motion. If the district court had jurisdiction, he has failed to show the district court abused its discretion by denying his Rule 35 motion.

B. Standard Of Review

“If a sentence is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and we review the denial of the motion for an abuse of discretion.” State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In evaluating whether a lower court abused its discretion, the appellate court conducts a four-part inquiry, which asks “whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” State v. Herrera, 164 Idaho 261, 272, 429 P.3d 149, 160 (2018) (citing Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)).

C. The District Court Lacked Jurisdiction To Rule On Booth’s Rule 35 Motion

A Rule 35 motion must be brought “within 120 days of the entry of the judgment.” I.C.R. 35(b). “[I]f a trial court fails to rule upon a Rule 35 motion within a reasonable time after expiration of the 120–day period set forth in the rule, the trial court loses jurisdiction.” State v. Shumway, 144 Idaho 580, 582, 165 P.3d 294, 296 (Ct. App. 2007) (footnote omitted). “A trial court will retain jurisdiction to rule upon a Rule 35 motion if it acts within a ‘reasonable time’ after the 120 day limitation expires.” State v. Tranmer, 135 Idaho 614, 616, 21 P.3d 936, 938 (Ct. App. 2001). A district court may not delay ruling on the motion “in order to evaluate the defendant’s progress in prison” but some delay is allowed “simply because the court had not had time to consider it.” State v. Chapman, 121 Idaho 351, 354, 825 P.2d 74, 77 (1992). The reasonable time requirement “is necessary to prevent the court from usurping the responsibilities of parole officials.” Shumway, 144 Idaho at 582, 165 P.3d at 296 (citing Chapman, 121 Idaho at 355, 825 P.2d at 78). “Where the court’s decision on a timely-filed Rule 35 motion is unreasonably delayed,

..., and where the court fails to establish a record substantiating the reasons for its delay, the court's jurisdiction expires.” State v. Parvin, 137 Idaho 783, 786, 53 P.3d 834, 837 (Ct. App. 2002).

Booth filed his Rule 35 motion on November 28, 2018, exactly 120 days after entry of judgment on July 31, 2018. (46454 R., pp. 534, 555.) The motion was not ruled on until September 1, 2020. (R., p. 37.) The ruling, 763 days after entry of judgment and 643 days after filing the motion was not a reasonable time.

Nor is there any record substantiating any reason for the delay. Indeed, the record shows no filings in the district court other than the appeal between the November 28, 2018, filing of the motion, and a filing of a notice of hearing on June 24, 2020. (R., pp. 23-24.)

Finally, the evidence presented in support of the motion was exclusively related to Booth's performance in prison. (Tr., p. 9, L. 16 – p. 11, L. 18.) It was simply a prohibited request that the district court usurp the parole responsibilities of the executive branch.

Because the delay was unreasonable and without justification in the record, the district court lacked jurisdiction to consider it. Denial of the motion should be affirmed on the basis that the district court lacked jurisdiction to consider or grant it.

D. Booth Has Shown No Abuse Of The District Court's Discretion

Even if the district court had jurisdiction, and therefore discretion to grant or deny the motion, Booth has failed to show any abuse of discretion. The record shows the district court perceived its discretion, employed the correct legal standards to the issue before it, and acted reasonably and within the scope of its discretion.

At the Rule 35 hearing, the district court acknowledged that Booth “is requesting the Court to reduce the fixed portion of the sentence from 30 years to 15 years.” (48374 Tr., p. 18, Ls. 10-12.) The district court stated that the “new information that has been provided can be summarized

as follows: that Mr. Booth has been in the custody of the Department of Corrections and he has been moved from Boise to Texas to Arizona,” that Booth “hasn’t received any significant disciplinary violations,” and that Booth “hasn’t been given the opportunity to engage in any sort of meaningful treatment.” (48374 Tr., p. 18, Ls. 12-18.) The district court also noted a recurring argument made at sentencing “about [Booth’s] level of cooperation with the investigation and the outcomes that were achieved in his case and in Mr. Hutto’s case, the codefendant.” (48374 Tr., p. 18, Ls. 19-22.) The district court did not find “that any of the new information impacts the appropriateness of the sentence.” (48374 Tr., p. 18, Ls. 23-24.) The district court stated that it’s “not uncommon to have prisoners serving a sentence of a given length to be moved from facility to facility,” and that “it’s actually to be expected that inmates are not to violate the rules of the facilities that they’re in.” (48374 Tr., p. 18, L. 25 – p. 19, L. 5.) The district court stated it’s “not uncommon to have an inmate who is serving a lengthy sentence not necessarily be engaged in rehabilitative treatment at this point in the service of their sentence.” (48374 Tr., p. 19, Ls. 5-8.) The district court concluded Booth had not presented information that “changes the fact that the sentence that was imposed was within the legal parameters and was well within the exercise of the Court’s discretion.” (48374 Tr., p. 19, Ls. 9-12.)

On appeal, Booth argues that the “new information about his behavior while in prison, the lack of treatment opportunities ... his hope that his new placement in Arizona would provide him with rehabilitative programming,” and “his sincere remorse to the surviving victims of the offenses” show an abuse of discretion. (Appellant’s brief, p. 6.) Booth’s argument does not show an abuse of discretion. As the district court found, movement between correctional facilities is not unusual, good conduct is expected, and lack of focused rehabilitation efforts was normal at this point of Booth’s sentence.

Booth committed heinous crimes, robbing and killing Bo Kirk for a few hundred dollars. The sentences fulfill the goals of sentencing. Booth has failed to show that the district court abused its discretion by denying his Rule 35 motion.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 11th day of May, 2021.

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

ZACHARI S. HALLETT
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of May, 2021, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

DENNIS BENJAMIN
ATTORNEY FOR APPELLANT
db@nbmlaw.com

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