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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 48832-2021
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-19-6386
)	
ALEXIS AVALOS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Has Avalos failed to show the district court erred when it denied Avalos's Rule 35 motion challenging the relinquishment of jurisdiction?

ARGUMENT

Avalos Has Failed To Show That The District Court Erred When It Denied His Rule 35 Motion Challenging The Relinquishment Of Jurisdiction

A. Introduction

While on probation for possession of a controlled substance, Avalos attacked Jared Tubbs, punching him repeatedly in the head and stealing a backpack. (PSI, pp. 6-8, 10-11, 13.) When officers arrested him he was in possession of heroin. (PSI, p. 8.) The state charged Avalos with

robbery. (R., pp. 19-20.) In a different case it charged him with possession of heroin. (PSI, pp. 11-12.) Avalos pled guilty to robbery pursuant to a plea agreement. (R., pp. 22, 33.) The district court imposed a sentence of eight years with four years determinate (concurrent with the possession of heroin sentence) and retained jurisdiction. (R., pp. 37-38, 45-46.) Avalos was serving the retained jurisdiction on all three convictions, the robbery in this case and the two other possession of a controlled substance convictions. (PSI, p. 119.)

Several months later the Idaho Department of Correction submitted an addendum PSI (APSI) recommending the district court relinquish jurisdiction because Avalos had failed to “transfer the skills” he had learned into his behavior, was “unable to follow the rules,” “harassed” other inmates, and “would not be safe to send back into the community at this time.” (PSI, pp. 119-25.) After receiving the APSI the district court relinquished jurisdiction. (R., p. 53.)

More than eight months later, Avalos filed a *pro se* Rule 35 motion to correct an illegal sentence, asserting that relinquishing jurisdiction without a hearing violated his due process rights. (R., pp. 75-83.) The district court denied the motion. (R., p. 86.) About a month later, Avalos filed, through counsel, a second Rule 35 motion to correct an illegal sentence, again asserting a due process violation because the court did not hold a hearing prior to relinquishing jurisdiction. (R., pp. 89-90; 5/5/21 Tr., p. 4, L. 10 – p. 7, L. 24; p. 9, L. 17 – p. 10, L. 16.) The district court denied the motion. (R., p. 111; 5/5/21 Tr., p. 10, L. 19 – p. 13, L. 17.) Avalos filed a notice of appeal and an amended notice of appeal timely from the order denying the Rule 35 motion. (R., pp. 107-09, 116-19.)

On appeal, Avalos argues, “[m]indful” of contrary authority, that the district court erred by denying his Rule 35 motion because the “decision to relinquish jurisdiction without a hearing was a violation of his due process rights.” (Appellant’s brief, p. 4.) This argument fails for two reasons.

First, the district court lacked jurisdiction to reconsider its final order relinquishing jurisdiction because Rule 35 does not provide a mechanism to challenge the manner in which jurisdiction was relinquished. Second, if considered on the merits, there was no due process right to a hearing on relinquishment of jurisdiction.

B. Standard Of Review

“Generally, whether a sentence is illegal or whether it was imposed in an illegal manner is a question of law, over which we exercise free review.” State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009).

C. The District Court Lacked Jurisdiction To Consider The Rule 35 Motion

First, the district court’s denial of the Rule 35 motion must be affirmed because the district court lacked jurisdiction to grant it. It is well established that a trial court lacks jurisdiction to reconsider or otherwise alter a final post-judgment order absent some legal authority extending its jurisdiction to do so. Int. of Doe, 165 Idaho 72, 78, 438 P.3d 769, 775 (2019) (“Once the time to appeal a final judgment or order expires, the court does not have jurisdiction unless there is a statute or rule to extend jurisdiction.”); State v. Jakoski, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003) (“Absent a statute or rule extending its jurisdiction, the trial court’s jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal.” (footnote omitted)). Rule 35 did not apply to Avalos’s motion because a “motion complaining of the *ex parte* procedure used in relinquishing jurisdiction was not a challenge to the manner in which sentence was *imposed*.” State v. Alvarado, 132 Idaho 248, 249, 970 P.2d 516, 517 (Ct. App. 1998) (emphasis original). “In order to challenge

a district court's order relinquishing jurisdiction, a defendant must file an appeal within forty-two days of the entry of the court's order." Id.

The order relinquishing jurisdiction was filed May 15, 2020. (R., p. 53.) Avalos did not file an appeal from this order. (See, generally, R.) He brought a Rule 35 motion, which allows challenges to how the sentence was *imposed*, but does not address challenges to procedures related to relinquishment.¹ Because Rule 35 did not extend the time for the district court to reconsider its order relinquishing jurisdiction, the district court lacked jurisdiction to reconsider its already final order.

Second, even if the district court had jurisdiction to consider the motion, it was without merit and therefore properly denied. Because defendants subject to retained jurisdiction do "not have a constitutionally protected liberty interest" in being placed on probation, they do not have a due process right to a hearing prior to relinquishing jurisdiction. State v. Coassolo, 136 Idaho 138, 141-43, 30 P.3d 293, 296-98 (2001). See also State v. Braaten, 144 Idaho 606, 610, 167 P.3d 357, 361 (Ct. App. 2007) ("the mere possibility of receiving probation after a period of retained jurisdiction is not a liberty interest sufficient to require the procedural due process of a hearing before the court relinquishes jurisdiction"); State v. Goodlett, 139 Idaho 262, 264-65, 77 P.3d 487, 489-90 (Ct. App. 2003). The district court correctly held that it did not violate Avalos's due process rights by relinquishing jurisdiction without a hearing because there was no due process right to a hearing.

¹ Even if Avalos could have challenged the manner in which his sentence was relinquished, his motion was not filed within 120 days as required by the Rule and therefore, again, the district court lacked jurisdiction. I.C.R. 35(b) (challenges to manner in which sentence was imposed must be brought within 120 days).

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Avalos's Rule 35 motion.

DATED this 19th day of October, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of October, 2021, served a true and correct copy of the foregoing RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Kenneth K. Jorgensen
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KKJ/dd