

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37922

STATE OF IDAHO,)	2011 Unpublished Opinion No. 494
)	
Plaintiff-Respondent,)	Filed: May 26, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
JAMES MICHAEL DAVIS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Renae J. Hoff, District Judge.

Appeal from order relinquishing jurisdiction, dismissed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Judge, GUTIERREZ, Judge
and MELANSON, Judge

PER CURIAM

James Michael Davis was convicted of lewd conduct with a minor under sixteen, I.C. § 18-1508, on July 7, 2009. The district court imposed a unified sentence of fifteen years, with a minimum period of confinement of seven and one-half years, and retained jurisdiction. On December 23, 2009, the court conducted a retained jurisdiction review hearing at which the court announced its intent to retain jurisdiction a second time. An amended judgment purporting to again retain jurisdiction was entered on January 12, 2010. At the conclusion of the second period of retained jurisdiction, the district court relinquished jurisdiction. Davis appeals, contending that district court abused its discretion in failing to place him on probation at the conclusion of the retained jurisdiction period or, alternatively, in failing to sua sponte reduce his sentence.

We consider first the State's argument that Davis cannot obtain relief because the district court had no authority to retain jurisdiction a second time and, hence, no jurisdiction to place Davis on probation at the end of the second retained jurisdiction period. The State is correct.

The only authority for a trial court to place a defendant on a second period of retained jurisdiction within the same case is that conferred by Idaho Code Section 19-2601(4), which, at the time of Davis's conviction, provided that a court could suspend execution of the judgment and retain jurisdiction over the prisoner for the first 180 days of the sentence. The statute further provides that the trial court, "in its discretion may sentence a defendant to more than one (1) period of retained jurisdiction after a defendant has been placed on probation in a case." The Idaho Supreme Court has held that this statutory provision does not empower a court to place a defendant on successive periods of retained jurisdiction without an intervening period of probation. *State v. Urrabazo*, 150 Idaho 158, 244 P.3d 1244 (2010). The Supreme Court further held that this limitation on the trial court's power in section 19-2601(4) is jurisdictional. *Urrabazo*, 150 Idaho at 163, 244 P.3d at 1249. Consequently, the order for a second period of retained jurisdiction in this case is erroneous. The court had no authority to retain jurisdiction over Davis a second time. Therefore, its jurisdiction over Davis expired 180 days after entry of the judgment of conviction.

It follows that the present appeal is untimely. Idaho Appellate Rule 14(a) provides that an appeal in a criminal matter ordinarily must be filed within forty-two days from the filing date of the judgment. However, this period for appeal "is enlarged by the length of time the district court actually retains jurisdiction pursuant to Idaho Code. When the court releases its retained jurisdiction . . . the time within which to appeal shall commence to run." *Id.* Here, the district court "actually retained jurisdiction" only until January 4, 2010, when the first period of retained jurisdiction expired. Therefore, Davis had forty-two days from that date within which to file a timely appeal. Because Davis's appeal was not filed until July 29, 2010, it is untimely, and this Court will not consider the merits of the appeal. *See Urrabazo*, 150 Idaho at 163, 244 P.3d at 1249. For the foregoing reasons, this appeal is dismissed as untimely.