

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38049

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 555
	)	
<b>Plaintiff-Respondent,</b>	)	<b>Filed: July 20, 2011</b>
	)	
v.	)	<b>Stephen W. Kenyon, Clerk</b>
	)	
<b>DUSTIN PATRICK LANCASTER,</b>	)	<b>THIS IS AN UNPUBLISHED</b>
	)	<b>OPINION AND SHALL NOT</b>
<b>Defendant-Appellant.</b>	)	<b>BE CITED AS AUTHORITY</b>
	)	

---

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John T. Mitchell, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, reversed and remanded.

Molly J. Huskey, State Appellate Public Defender; Shawn F. Wilkerson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Dustin Patrick Lancaster appeals from the district court’s order denying his Idaho Criminal Rule 35 motion for reduction of sentence. For the reasons set forth below, we reverse and remand.

**I.**

**FACTS AND PROCEDURE**

After forcing his underage ex-girlfriend’s car off the road, Lancaster was charged with felony stalking in the first degree, I.C. § 18-7905, and reckless driving, I.C. § 49-1401. Pursuant to a plea agreement, Lancaster pled guilty to stalking and the reckless driving charge was dismissed. Lancaster was sentenced to a unified term of five years, with a minimum period of confinement of one year, and the district court retained jurisdiction. After Lancaster completed the rider program, the district court relinquished jurisdiction. Lancaster filed an application for post-conviction relief arguing, among other things, that his attorney was ineffective for failing to

file an I.C.R. 35 motion for reconsideration of the sentence after Lancaster requested counsel to do so. Based upon a stipulation the district court granted that portion of Lancaster's application for post-conviction relief and reinstated his right to file a Rule 35 motion. In October 2009, Lancaster was denied parole by the Idaho Commission of Pardons and Parole. In April 2010, Lancaster filed a Rule 35 motion and submitted new evidence pertaining to his performance in prison. After conducting a hearing, the district court denied Lancaster's Rule 35 motion. Lancaster appeals.

## II. ANALYSIS

Lancaster argues that the district court abused its discretion in denying his Rule 35 motion because his sentence is excessive in light of the "new or additional" information regarding his performance in prison. Specifically, Lancaster asserts that the district court did not rule on the merits of his motion and denied it solely on the grounds that granting relief would invade the province of the Parole Commission. The state argues that the district court did exercise discretion in denying the motion. A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). A lower court's decision to grant or deny a Rule 35 motion will not be disturbed in the absence of an abuse of discretion. *State v. Villarreal*, 126 Idaho 277, 281, 882 P.2d 444, 448 (Ct. App. 1994).

Rule 35 provides that the trial court "may reduce a sentence within 120 days after the filing of a judgment of conviction or within 120 days after the court releases retained jurisdiction." However, it is well settled in Idaho that a trial court does not lose jurisdiction to act upon a timely filed motion under Rule 35 merely because the 120-day period expires before the judge can reasonably consider and act upon the motion. *See State v. Chapman*, 121 Idaho 351, 353, 825 P.2d 74, 76 (1992); *State v. Simpson*, 131 Idaho 196, 197, 953 P.2d 636, 637 (Ct. App. 1998). A trial court retains jurisdiction to rule upon a Rule 35 motion if it acts within a "reasonable time" after the 120-day limitation expires. *Chapman*, 121 Idaho at 353, 825 P.2d at 76; *see also Simpson*, 131 Idaho at 197, 953 P.2d at 637. The reasonableness of any delay by the district court in ruling upon a Rule 35 motion must be evaluated in light of the purposes supporting the 120-day limitation and the reasons for the trial court's delay in each case. *State v.*

*Tranmer*, 135 Idaho 614, 616, 21 P.3d 936, 938 (Ct. App. 2001). The 120-day limitation serves two purposes--it protects judges from repeated pleas by those sentenced and ensures that the court does not usurp the responsibilities of the parole officials by acting on the motion in light of the movant's conduct while in prison. *Simpson*, 131 Idaho at 197-98, 953 P.2d at 637-38; *see also Chapman*, 121 Idaho at 353, 825 P.2d at 76. The second of these purposes insures that the district court's power to reduce a sentence will not be misused as a substitute for the consideration for parole by the Parole Commission by holding a timely motion for reduction of sentence in abeyance for months or years and then seeking to grant it on the basis of defendant's conduct in prison. *Tranmer*, 135 Idaho at 616, 21 P.3d at 938.

Any delay which allows the trial court to infringe upon the duties of the Parole Commission is per se unreasonable. *Chapman*, 121 Idaho at 355, 825 P.2d at 78. A clear indication of infringement occurs when a district court reduces a sentence while the defendant is serving the indeterminate portion of his sentence. *Tranmer*, 135 Idaho at 617, 21 P.3d at 939. In *Simpson*, the district court waited sixteen months before issuing a decision on Simpson's Rule 35 motion. *Simpson*, 131 Idaho at 197, 953 P.2d at 637. Although the record was unclear, it appeared the delay was caused because the district judge who was sitting at the time Simpson filed his motion was succeeded in office by a different judge and it was the latter who eventually ruled on Simpson's motion. *Id.* at 198, 953 P.2d at 638. This Court held that this explanation for the delay would, under most circumstances, be sufficient for the Court to consider the sixteen-month delay to be reasonable. *Id.* This Court noted, however, that Simpson had almost completely served the fixed portion of his sentence and would soon be eligible for parole. *Id.* It held that, under such circumstances, the district court's assertion of jurisdiction would infringe upon the authority of the Parole Commission and that, therefore, the district court lost jurisdiction to act upon Simpson's Rule 35 motion. *Id.* Plainly, an unreasonable delay in ruling on a Rule 35 motion may result in a loss of jurisdiction and a delay which would result in a ruling on the motion after a defendant has served the fixed portion of his or her sentence is per se unreasonable. This case is, however, readily distinguishable from *Chapman*, *Tranmer*, and *Simpson*. Here, the district court did not delay ruling on a timely-filed motion but, rather, ruled on a motion which was filed late with the district court's sanction based upon Lancaster's application for post-conviction relief. Because of the unusual procedural posture of this case, we cannot say that the district court lacked jurisdiction to rule on the motion or that it had no

discretion to decide the motion. To do so would render the district court's order in the post-conviction action, allowing Lancaster to file the motion, meaningless.

Lancaster asserts that the district court abused its discretion because it did not rule on the merits of his motion and simply denied it on the grounds that granting relief would invade the province of the Parole Commission. In ruling on Lancaster's Rule 35 motion, the district court stated:

I have again granted Rule 35 motions to reduce the fixed portion previously based on prison performance but we are so far past the fixed portion right now that I think it is irresponsible of me to interfere with the function of the parole commission, and that is specifically to assess a person once they've made it to the fixed portion or beyond the fixed portion of their sentence such as Mr. Lancaster finds himself--the situation . . . Lancaster finds himself in.

. . . .  
What's truly relevant is . . . performance in prison, and again, I go right back to the fact that he is parole eligible which answers, in my mind, the Rule 35 motion. I am not going to invade the province of the State of Idaho Commission of Pardons and Parole on this matter. I realize that this is coming to me at a late point in time because of the stipulated agreement on the post-conviction relief case, and which is I think what causes it really to come to me in this late posture such that we're well into the indeterminate portion of his sentence, but I can't change that fact, but I can tell you all that I'm not going to invade the province of the State of Idaho Commission of Pardons and Parole, and Mr. Lancaster, it does seem like you've made some changes, and if that is the case, then you should be able to convince the parole commission that you are a good candidate for parole at some time some point in the future.

When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989). It is unclear from the record whether the district court recognized that it had discretion in this case. We acknowledge that the district court may have decided, as a matter of discretion, that it would not invade the province of the Parole Commission. On the other hand, the district court may have incorrectly believed that it had no discretion because Lancaster was under the jurisdiction of the Parole Commission. Accordingly, we must reverse the order denying the Rule 35 motion and remand so as to allow

the district court to properly exercise its discretion in ruling on the motion. We express no opinion as to whether the court should grant the motion and it is a matter for the district court to decide in an exercise of discretion. The district court, in ruling on the motion, may again consider that Lancaster is under the jurisdiction of the Parole Commission and parole has been denied, as well as any other evidence properly before the district court.

### **III.**

#### **CONCLUSION**

We hold, based upon the record, that it is unclear whether the district court exercised its discretion in ruling on Lancaster's Rule 35 motion. Accordingly, we reverse the order denying the motion and remand so that the district court may properly exercise discretion in ruling on the motion.

Judge LANSING and Judge GUTIERREZ, **CONCUR.**