

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37810

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 512
	)	
Plaintiff-Respondent,	)	Filed: June 9, 2011
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
HOWARD JACKSON WILLS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Lansing L. Haynes, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

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

Hon. Lawrence G. Wasden, Attorney General; Russell J. Spencer, Deputy Attorney General, Boise, for respondent.

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

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PER CURIAM

Howard Jackson Wills pleaded guilty to trafficking in heroin, I.C. § 37-2732B(a)(1)(A), and unlawful possession of a firearm, I.C. § 18-3316(1). The district court sentenced Wills to a unified life sentence with five years determinate for trafficking in heroin and a concurrent unified sentence of five years with three years determinate for unlawful possession of a firearm. A judgment of conviction was filed on May 28, 2008, but it misstated the sentence that had been imposed. This error was corrected by an Order Amending Judgment filed on August 6, 2008, which amended the judgment to conform to the sentence pronounced at the sentencing hearing.

On September 22, 2008, Wills filed an Idaho Criminal Rule 35 motion for reduction of his sentence. On October 8, 2008, Wills filed a motion for a hearing on his Rule 35 motion and a

motion for appointment of counsel to represent him on the Rule 35 motion. The court appointed counsel, who shortly thereafter moved for release of a copy of the presentence report, which motion was promptly granted. The record reveals no action on the matter thereafter until May 26, 2009, when a hearing on the Rule 35 motion was scheduled for June 26, 2009. That hearing was vacated, however, at the request of defense counsel. The record shows no activity thereafter until March 3, 2010, when a hearing was scheduled for April 30, 2010. A hearing was finally conducted on April 30, at which time the court denied the motion. Wills filed a notice of appeal that is timely only from the order denying his Rule 35 motion. He contends that the district court abused its discretion by denying the motion.

We do not reach the merits of Wills's argument because, as the State asserts, the district court lost jurisdiction to grant Wills's motion due to lapse of time. As relevant to this case, I.C.R. 35 provides that the trial court "may reduce a sentence within 120 days after the filing of a judgment of conviction . . . ." However, a court does not lose jurisdiction to act upon a timely-filed motion merely because the 120-day period expires before the court can reasonably consider and decide the motion. *See State v. Chapman*, 121 Idaho 351, 353, 825 P.2d 74, 76 (1992); *State v. Tranmer*, 135 Idaho 614, 616, 21 P.3d 936, 938 (Ct. App. 2001). A trial court will continue to possess jurisdiction if the court acts within a "reasonable time" after the 120-day limitation expires. *Chapman*, 121 Idaho at 353, 825 P.2d at 76. If the trial court fails to rule upon a Rule 35 motion within a reasonable time after the 120-day period, however, the court loses jurisdiction. *Id.* at 354, 825 P.2d at 77. The Idaho Supreme Court explained that the 120-day time limitation serves two policies: "[I]t protects judges against repeated importunities by those sentenced and it ensures that the court does not usurp the responsibilities of parole officials by retaining jurisdiction indefinitely and acting on the motion in light of the movant's conduct in prison. . . ." *Id.* at 353, 825 P.2d at 76 (quoting *United States v. Smith*, 650 F.2d 206, 208 (9th Cir. 1981)).

In determining whether the trial court had jurisdiction to act on a Rule 35 motion at a date beyond the 120-day time limit, we consider whether the record shows a legitimate cause for the delay and whether that delay was reasonable in light of the rationales underlying the time limit. *State v. Fisch*, 142 Idaho 781, 784, 133 P.3d 1246, 1249 (Ct. App. 2006). Delays may be justified by such factors as a judge's absence due to illness or other cause, the judge's involvement in a protracted trial of another case, the need to summon witnesses, or the need to

procure a medical examination or other pertinent materials. *Id.* It is the defendant's responsibility to precipitate action on a Rule 35 motion within a reasonable time or to provide a record adequately justifying the delay, and if the record is devoid of any explanation, we cannot hold that a lengthy delay was reasonable. *State v. Day*, 131 Idaho 184, 186, 953 P.2d 624, 626 (Ct. App. 1998).

Because a misstatement of Wills's sentence in the original judgment of conviction was corrected by an August 8, 2008, order, in this case the 120-day period would begin to run from the latter date. Therefore, the 120-day period specified by Rule 35 ended in early December 2008.

The record before us discloses no reason for the delay of nearly seventeen months thereafter until disposition of Wills's Rule 35 motion. Consequently, we are constrained to hold that the district court here lost jurisdiction to grant Wills's Rule 35 motion and, for that reason, the denial of his motion must be affirmed.

The order of the district court denying Wills's motion for reduction of his sentence is affirmed.