

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 43974

STATE OF IDAHO,) 2016 Unpublished Opinion No. 639
)
Plaintiff-Respondent,) Filed: August 17, 2016
)
v.) Stephen W. Kenyon, Clerk
)
MITCHELL J. McROBERTS,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Randy J. Stoker, District Judge.

Order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Eric D. Fredericksen, Interim State Appellate Public Defender; Maya P. Waldron, Deputy Appellate Public Defender, Boise, for appellant.

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

Before GUTIERREZ, Judge; GRATTON, Judge;
and HUSKEY, Judge

PER CURIAM

Mitchell J. McRoberts was found guilty of felony injury to a child, Idaho Code § 18-1501(1). The district court sentenced McRoberts to a unified term of ten years, with a minimum period of confinement of three years, suspended the sentence, and placed McRoberts on supervised probation for five years. McRoberts subsequently violated his probation but was continued on probation. Following a second probation violation, the district court revoked McRoberts' probation, ordered execution of the underlying sentence, and retained jurisdiction. Upon McRoberts' completion of the retained jurisdiction, the district court suspended McRoberts' sentence and placed him on supervised probation. McRoberts again violated the

terms of his probation, and the district court revoked probation and ordered execution of a reduced sentence of ten years, with a minimum period of confinement of one year. McRoberts filed an untimely Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. McRoberts appeals.

Idaho Criminal Rule 35 provides that a district court has discretion to consider and act upon a motion filed within fourteen days of the order revoking probation. The filing limitations provided by Rule 35 are a jurisdictional limit on the authority of the court to consider the motion and, unless filed within the period, a district court lacks jurisdiction to grant any relief. *State v. Sutton*, 113 Idaho 832, 833, 748 P.2d 416, 417 (Ct. App. 1987). In this case, McRoberts acknowledges that his Rule 35 motion for reduction of sentence was untimely. Because McRoberts' Rule 35 motion was not filed within the fourteen-day limitation provided by the rule, the district court lacked jurisdiction to consider it. Accordingly, we do not address the merits of McRoberts' Rule 35 motion. Therefore, the district court's order denying McRoberts' Rule 35 motion is affirmed.