

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44101

STATE OF IDAHO,) 2016 Unpublished Opinion No. 776
)
Plaintiff-Respondent,) Filed: November 14, 2016
)
v.) Stephen W. Kenyon, Clerk
)
MISTY KAREN FROST,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Dane H. Watkins, Jr., District Judge.

Appeal from order revoking probation, dismissed; order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Eric D. Fredericksen, Interim State Appellate Public Defender; Andrea W. Reynolds, Deputy Appellate Public Defender, Boise, for appellant.

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

Before MELANSON, Chief Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

Misty Karen Frost pled guilty to possession of methamphetamine, Idaho Code § 37-2732(c)(1). The district court imposed a unified sentence of five years, with a minimum period of confinement of two years, suspended the sentence and placed Frost on probation. Subsequently, Frost admitted to violating the terms of the probation, and the district court consequently revoked probation, ordered execution of the original sentence, and retained jurisdiction. Upon Frost's completion of retained jurisdiction, the district court suspended Frost's sentence and placed her on probation. Following two reports of probation violations, the district court revoked Frost's probation and executed the underlying sentence. Frost filed an

Idaho Criminal Rule 35 motion for reduction of her sentence, which the district court denied. Frost appeals, contending that the district court abused its discretion in revoking probation and in denying her I.C.R. 35 motion for reduction of sentence.

Idaho Appellate Rule 14(a) requires an appellant to file a notice of appeal within forty-two days from the entry of the judgment or order from which the appeal is taken. Because Frost's appeal from the order revoking probation is untimely, this Court lacks jurisdiction to consider it. Therefore, Frost's appeal from the order revoking probation is dismissed.

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). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Upon review of the record, including any new information submitted with Frost's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Frost's Rule 35 motion is affirmed.