

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 45623

STATE OF IDAHO, )  
 )  
 ) **Filed: September 5, 2018**  
 )  
 ) **Plaintiff-Respondent,** )  
 ) **Karel A. Lehrman, Clerk**  
 )  
 ) **v.** )  
 ) **THIS IS AN UNPUBLISHED**  
 ) **KIM C. SUMMERS,** ) **OPINION AND SHALL NOT**  
 ) **BE CITED AS AUTHORITY**  
 ) **Defendant-Appellant.** )  
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 )

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Joel E. Tingey, District Judge.

Order denying Idaho Criminal Rule 35, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

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

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Before GRATTON, Chief Judge; HUSKEY, Judge;  
and LORELLO, Judge

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Kim C. Summers pleaded guilty to possession of a controlled substance, methamphetamine, Idaho Code § 37-2732(c)(1). The district court imposed a unified sentence of seven years, with two years determinate. The district court retained jurisdiction and ordered Summers to report to the jail a few days after imposition of sentence to serve his period of retained jurisdiction. Summers failed to report to jail. A bench warrant was issued and eventually Summers was arrested. The district court relinquished jurisdiction and executed the underlying sentence. Summers filed an untimely Idaho Criminal Rule 35 motion, which the district court denied. Summers appeals.

Idaho Criminal Rule 35 provides that a district court has discretion to consider and act upon a motion filed within 120 days of the order relinquishing jurisdiction. The filing limitations provided by I.C.R. 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, Summer acknowledges that his I.C.R. 35 motion for reduction of sentence was untimely. Because Summer's I.C.R. 35 motion was not filed within the 120-day limitation provided by the rule, the district court lacked jurisdiction to consider it. Accordingly, we do not address the merits of Summer's I.C.R. 35 motion. Therefore, the district court's order denying Summer's I.C.R. 35 motion is affirmed.