

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47294

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) **Filed: September 10, 2020**
)
 v.) **Melanie Gagnepain, Clerk**
)
) **THIS IS AN UNPUBLISHED**
 HORACIO GALVEZ-VIDALES,) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
)
 Defendant-Appellant.)
)
)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. George A. Southworth, District Judge.

Order denying Idaho Criminal Rule 35 motion, affirmed.

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

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

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

PER CURIAM

Pursuant to a binding plea agreement, Horacio Galvez-Vidales pleaded guilty to lewd conduct with a child under sixteen, Idaho Code § 18-1508. As part of the plea agreement, Galvez-Vidales waived his right to appeal from the sentence or to file an Idaho Criminal Rule 35 motion. Consistent with the plea agreement, the district court imposed a unified sentence of eighteen years, with a minimum period of confinement of eight years. Galvez-Vidales filed an untimely Idaho Criminal Rule 35 motion for reduction of sentence. The district court denied the motion holding that the plea agreement barred Galvez-Vidales from seeking a reduction in his sentence and the motion was untimely filed. Galvez-Vidales appeals from the denial of his Rule 35 motion mindful that it was untimely filed.

Idaho Criminal Rule 35(b) provides that a district court has discretion to consider and act upon a motion for reduction of sentence made within 120 days of the entry of judgment. The filing limitations provided by Rule 35(b) are a jurisdictional limitation 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. Thomas*, 161 Idaho 898, 899, 392 P.3d 1239, 1240 (Ct. App. 2017). In this case, Galvez-Vidales's acknowledges that his Rule 35 motion for reduction of sentences was untimely. Because Galvez-Vidales's Rule 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 Galvez-Vidales's Rule 35 motion. Therefore, the district court's order denying Galvez-Vidales's motion is affirmed.