

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47613/47614/47615/47616

STATE OF IDAHO,	)	
	)	<b>Filed: September 17, 2020</b>
Plaintiff-Respondent,	)	
	)	<b>Melanie Gagnepain, Clerk</b>
v.	)	
	)	<b>THIS IS AN UNPUBLISHED</b>
ALLEN RAY FREEMAN, JR.,	)	<b>OPINION AND SHALL NOT</b>
	)	<b>BE CITED AS AUTHORITY</b>
Defendant-Appellant.	)	
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Peter G. Barton, District Judge.

Appeals from orders relinquishing jurisdiction, dismissed; orders denying I.C.R. 35 motions, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Kimberly A. Coster, Deputy Appellate Public Defender, Boise, for appellant.

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

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

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PER CURIAM

In these consolidated appeals, Allen Ray Freeman, Jr. pled guilty to possession of forged check notes, bank bills or checks, Idaho Code § 18-3605 (first case); grand theft, I.C. §§ 18-2403(1), 18-2407(1)(b), 18-2409 (second case); grand theft and forgery, I.C. §§ 18-2403(1), 18-2407(1)(b), 18-2409, 18-3601 (third case); and grand theft, burglary, and misappropriation of personal identifying information, I.C. §§ 18-2403(3), 2407(1)(b), 2409, 18-1401, 18-3126, 18-3128 (fourth case). The district court sentenced Freeman to a unified term of five years with two years determinate for misappropriation of personal identifying information, and concurrent unified terms of ten years with three years determinate, for all of the other charges, and the court

retained jurisdiction. Following the period of retained jurisdiction, the district court relinquished jurisdiction. Thirty-eight days following the issuance of the district court's order relinquishing jurisdiction, Freeman filed an Idaho Criminal Rule 35 motion in all four cases. The district court entered orders denying the motions. Forty-nine days after entry of the orders relinquishing jurisdiction Freeman filed notices of appeal. On appeal, Freeman asserts that the district court abused its discretion when it relinquished jurisdiction and when it subsequently refused to reduce his excessive sentences pursuant to his Rule 35 motions. The State argues that Freeman's appeals from the orders relinquishing jurisdiction are untimely and that the district court did not abuse its discretion in denying his Rule 35 motions.

Idaho Appellate Rule 14(a) requires a notice of appeal to be filed within forty-two days from entry of a judgment or order from which the appeal is taken. A motion for reduction of sentence can extend the time for filing an appeal, but only if the motion is filed within fourteen days from entry of the judgment. As noted, Freeman's Rule 35 motions were filed thirty-eight days after entry of the orders relinquishing jurisdiction and, thus, did not extend the time to appeal from relinquishment.

Pursuant to Idaho Appellate Rule 21, failure to file a notice of appeal with the clerk of the district court within the time limits prescribed by the appellate rules deprives the appellate courts of jurisdiction over the appeal. Idaho Appellate Rule 14 provides, in part:

Any appeal . . . may be made only by physically filing a notice of appeal with the clerk of the district court within 42 days from the date evidenced by the filing stamp of the clerk of the court on any judgment, order, or decree of the district court appealable as a matter of right in any civil or criminal action.

Therefore, this Court does not have jurisdiction to review the orders of the district court relinquishing jurisdiction.

Next, we review whether the district court erred in denying Freeman's Rule 35 motions. 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 Freeman's Rule 35 motions, we conclude no abuse of discretion has been shown.

Freeman's appeals of the district court's orders relinquishing jurisdiction are dismissed, and the district court's orders denying Freeman's Rule 35 motions are affirmed.