

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47852

STATE OF IDAHO,)
) Filed: September 15, 2020
 Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
 v.)
) THIS IS AN UNPUBLISHED
 CHRISTOPHER NEAL OSBORN,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
 Defendant-Appellant.)
)
)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John Mitchell, District Judge.

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

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

PER CURIAM

Christopher Neal Osborn pled guilty to felony violation of a no-contact order, Idaho Code § 18-920(3). In exchange, the State dismissed additional charges. The district court imposed a five-year determinate sentence and retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Osborn's sentence and placed him on probation. Osborn subsequently admitted to violating the terms of his probation. The district court revoked probation, executed the underlying sentence, and then sua sponte reduced the sentence to a unified term of five years with four years determinate. Osborn filed an Idaho

Criminal Rule 35(b) motion for further reduction of the sentence, which the district court denied. Osborn appeals.

As an initial matter, we address the State's argument that the district court lacked jurisdiction to consider Osborn's Rule 35(b) motion. Rule 35(b) provides in relevant part that "the court may . . . reduce a sentence on revocation of probation or on motion made within 14 days after the filing of the order revoking probation." The court entered its order revoking Osborn's probation on September 30, 2019. Eleven days later, Osborn filed his Rule 35(b) motion for a reduction of the sentence on October 11. The district court, however, did not enter an order denying Osborn's motion until more than four months later on February 27, 2020.

According to the State, this delay was unreasonable and deprived the district court of jurisdiction to consider Osborn's Rule 35(b) motion. In support, the State relies on *State v. Chapman*, 121 Idaho 351, 825 P.2d 74 (1992); *State v. Johnson*, 152 Idaho 56, 266 P.3d 1161 (Ct. App. 2011); and *State v. Diggie*, 140 Idaho 238, 91 P.3d 1142 (Ct. App. 2004). These decisions, however, are inapplicable to Osborn's Rule 35(b) motion for a sentence reduction following an order revoking probation; none of these cases address a motion filed within fourteen days of an order revoking probation. *See Chapman*, 121 Idaho at 354, 825 P.2d at 77 (addressing motion filed within 120 days of judgment's entry and concluding court's delay in granting motion for more than two years infringed on parole board's duties, is per se unreasonable, and deprived court of jurisdiction); *Johnson*, 152 Idaho at 62, 266 P.3d at 1167 (applying mailbox rule to pro se inmate's Rule 35 motion to be filed within 120 days of judgment's entry); *Diggie*, 140 Idaho at 240, 91 P.3d at 1144 (addressing appeal of order revoking probation entered after expiration of court's 180-day period of retained jurisdiction under I.C. § 19-2601(4)). Moreover, although nothing in the record explains the reason the district court delayed from October 2019 until February 2020 to rule on Osborn's Rule 35(b) motion, the State fails to explain how the delay was unreasonable. Accordingly, we reject the State's argument that the court lacked jurisdiction to consider the motion.

Osborn's Rule 35(b) motion for reduction of sentence after the district court's order revoking probation 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 Osborn's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Osborn's Rule 35 motion is affirmed.