

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48215

STATE OF IDAHO,)
)
) **Filed: September 9, 2021**
)
) **Melanie Gagnepain, Clerk**
)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Samuel A. Hoagland, District Judge.

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

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

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

Before GRATTON, Judge; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

Anthony Joseph E. Alcala pled guilty to one count of voluntary manslaughter, Idaho Code § 18-4006(1), with an enhancement for use of a firearm or deadly weapon, I.C. § 19-2520, and two counts of aggravated battery, I.C. §§ 18-903(a), 18-907(b). On March 6, 2020, the district court entered a judgment and imposed a unified sentence of thirty years with ten years determinate for voluntary manslaughter enhanced by the use of a firearm or deadly weapon during the commission of a crime. For the two counts of aggravated battery, Alcala was sentenced to ten years with five years determinate for each count. All sentences were ordered to run consecutively. Alcala filed an Idaho Criminal Rule 35 motion, which the district court

denied on July 21, 2020. On July 31, 2020, Alcalá timely appealed the court's denial of the Rule 35 motion.

On appeal, Alcalá “appeals from the district court’s denial of his [Rule] 35 motion, challenging his sentence as an abuse of discretion” and argues his sentence was “excessive” under the sentencing objectives of deterrence, the possibility of rehabilitation, punishment or retribution for wrongdoing, and the protection of society. In response, the State construes Alcalá’s argument as directly challenging his sentence, contends Alcalá’s notice of appeal was untimely for this purpose and, as a result, argues this Court lacks jurisdiction to address Alcalá’s appeal.

The State is correct that if Alcalá’s appeal is construed as directly challenging the judgment and sentence entered on March 6, 2020, then that appeal is untimely and this Court lacks jurisdiction to address it. *See* Idaho Appellate Rule 14(a) (requiring appeal within forty-two days of judgment); *State v. Schultz*, 147 Idaho 675, 677, 214 P.3d 661, 663 (Ct. App. 2009) (“An appellant’s failure to file a timely notice of appeal deprives the appellate court of jurisdiction and requires dismissal of the appeal.”). Alcalá, however, expressly states that he appeals the denial of his Rule 35 motion. Accordingly, we review whether the district court erred in denying that motion.

A motion for reduction of sentence under Rule 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 Alcalá’s Rule 35 motion, we conclude no abuse of discretion has been shown.

Therefore, the district court’s order denying Alcalá’s Rule 35 motion is affirmed.