

considering probation and precluded the Court from any other disposition other than the agreed upon disposition of prison) and “therefore [sic] could not have considered the Defendant’s likelihood of scoring extraordinarily low on current recidivism rates.” Motion for Reduction of Sentence (I.C.R. 35) 1-2. While it is tempting to comment on the lunacy of filing a motion under I.C.R. 35 when the Court in fact followed the written I.C.R. 11(f) agreement to which Lee had affixed his signature and to which all the parties and the Court were contractually bound, there is a more clear and direct method of disposing of Lee’s I.C.R. 35 Motion.

Idaho Criminal Rule 35 provides in part:

(b) Within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction, a motion may be filed to correct or reduce a sentence and the court may correct or reduce the sentence. The Court may also reduce a sentence on revocation of probation or on motion made within 14 days after the filing of the order revoking probation.

The sentence imposed on August 16, 2017, is within the range of lawful sentences for the crime for which sentence was imposed. Lee has failed to even suggest any basis for determining that the imposed sentence is an illegal sentence. Since it is a legal sentence, under I.C.R. 35, the 120 time period applies.

Under the facts of this case, the last day Lee could have filed an I.C.R. 35 motion in this action was December 14, 2017, 120 days after the August 16, 2017, sentencing hearing. Lee filed his motion on December 18, 2017, four days too late. Thus, this court is without jurisdiction to grant leniency under I.C.R. 35. See *State v. Sutton*, 113 Idaho 832, 834, 748 P.2d 416, 418 (Ct. App. 1988). The only exception to the 120-day time limit is an explanation of delay via “special circumstances” (*State v. Parrish*, 110 Idaho 599, 601, 716 P.2d 1371, 1373 (Ct. App. 1986), special circumstances or because of misleading conduct by the state (*State v. Hocker*, 119 Idaho 105, 106-07, 803 P.2d 1011,

1012-13 (Ct. App. 1991), or where the trial court or the state misled defendant as to the time to file such motion (*State v. Joyner*, 121 Idaho 376, 379, 825 P.2d 99, 102 (Ct. App. 1992). Lee has not set forth any reason why he has delayed filing his motion, let alone the requisite “special circumstances”, nor has he set forth any action by the state or the court which misled Lee.

IT IS THEREFORE ORDERED that Lee’s I.C.R. 35 motion is **DENIED** and the same hereby is dismissed for lack of jurisdiction.

NOTICE OF RIGHT TO APPEAL

YOU, Lee, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer, if any.

DATED this 28th day of January, 2018.

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of January, 2018 copies of the foregoing were mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Prosecuting Attorney -

BILL LEE
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P. O. Box 8509
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Idaho Department of Correction
Records Division (certified copy)
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**CLERK OF THE DISTRICT COURT
KOOTENAI COUNTY**

BY: _____, Deputy

