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2000 Survey of Rhode Island Law: Cases: Criminal Procedure

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Criminal Procedure. *State v. DiStefano*, 764 A.2d 1156 (R.I. 2000). Rhode Island statutory law precludes admission of results of chemical tests at trial when the samples were seized without an individual's consent after the individual operated a motor vehicle within the state and was arrested. When such an individual has refused a chemical test, no test should be given, with or without a search warrant. Such preclusion is not an unconstitutional limitation on the judicial authority to issue search warrants because the superior court's warrant authority is limited to those powers conferred by statute from the Legislature and under these circumstances, no warrant authority has been delineated.

FACTS AND TRAVEL

The defendant, Lisa A. DiStefano (DiStefano), was driving a motor vehicle on Post Road in Warwick, Rhode Island, and collided with a motorcycle driven by David Smith.[1] Mr. Smith died from the injuries he sustained in the accident.[2] After an on-scene investigation, DiStefano was arrested for suspicion of operating a motor vehicle while under the influence of drugs or alcohol.[3] While at the Warwick police station, DiStefano submitted to a breath test and tested below the legal limit for alcohol intoxication.[4] A drug influence evaluation was then performed on DiStefano by an expert in the field, who concluded that she was under the influence of a central nervous system stimulant.[5] DiStefano was asked to submit to a blood test to determine the presence or absence of controlled substances, but she refused.[6] The Warwick police then obtained a search warrant from a superior court justice to extract blood and urine samples from DiStefano.[7] The blood test, obtained at a nearby hospital, showed the presence of marijuana and cocaine.[8] As a result, DiStefano was charged with one count of driving under the influence of liquor or drugs (DUI), death resulting, in violation

1. *See* State v. DiStefano, 764 A.2d 1156, 1157 (R.I. 2000).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.* at 1157-58.
6. *See id.* at 1158.
7. *See id.*
8. *See id.*

of section 31-27-2.2,[9] as well as various counts of possession of a controlled substance.[10]

Prior to trial, DiStefano filed a motion to suppress the introduction of the test results.[11] She contended that because her blood was drawn without her consent, in violation of section 31-27-2(c),[12] the test results were inadmissible, even though a judicially-authorized search warrant was obtained by police.[13] The superior court stayed further proceedings until three certified questions of law could be answered by the Rhode Island Supreme Court.[14] First, in view of *State v. Timms,*[15] should section 31-27-2(c) be interpreted to preclude, in a case involving an alleged violation of section 31-27-2.2 (driving under the influence, death resulting), the admission at trial of results of breathalyzer, blood or urine tests when the samples were seized without DiStefano's consent after a judicially authorized search warrant was issued? Secondly, does the language of section 31-27-2.1 (the breathalyzer refusal statute) preclude officers from obtaining a judicially authorized search warrant to seize a defendant's blood for alcohol or drug testing? Third, if the answer to the second question is yes, is the breathalyzer refusal statute an unconstitutional limit on the judicial authority to issue search warrants as provided in Article 5 of the Rhode Island Constitution and Rhode Island General Laws section 12-5-1?[16]

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9. *See id.*; R.I. Gen. Laws § 31-27-2.2 (1956) (2000 Reenactment). This statute generally provides the elements of "driving under the influence of liquor or drugs, resulting in death," and mandates that upon conviction, a violator is to be punished by imprisonment for no less than five (5) years if a first time offender of this violation. *See DiStefano*, 764 A.2d at 1159 n.4.

10. *See DiStefano,* 764 A.2d at 1158.

11. *See id.*

12. *See id.*; R.I. Gen. Laws § 31-27-2(c) (1956) (2000 Reenactment). This statute generally provides that in a criminal prosecution for a violation of subsection (a) *of this section*, evidence as to the amount of liquor, toluene, or any controlled substance in the defendant's blood at the time alleged as shown by a chemical analysis from a bodily substance test shall be admissible and competent provided that, among several conditions, the defendant has consented to the taking of the test. *See DiStefano*, 764 A.2d at 1159 n.5.

13. *See DiStefano*, 764 A.2d at 1158.

14. *See id.*

15. 505 A.2d 1132 (R.I. 1986).

16. *See DiStefano*, 764 A.2d at 1158; R.I. Gen. Laws § 12-5-1 (1956) (2000 Reenactment). This statute provides that a search warrant may be issued by any judge of the district court and that nothing contained in this chapter shall be construed as to restrain the power of the justices of the supreme or superior courts by virtue of § 8-3-6 to issue a search warrant. The authority for issuance of a search

ANALYSIS AND HOLDING

In a plurality decision, the supreme court reviewed prior case law and methods of statutory construction to answer the first two certified questions in the affirmative.[17] Because both questions were dependent on statutory interpretation, the court reviewed the historical treatment of statutes involving drunk driving.[18] Previously, as greater awareness of the inherent dangers of drunk driving emerged, the Legislature enacted statutes detailing various misdemeanor and felony charges for such violations.[19] In cases of the misdemeanor offense of driving under the influence, section 31-27-2(a), the Legislature provided that evidence from a chemical analysis of the defendant's blood, breath or urine is inadmissible unless the defendant has consented to the test.[20] This consent requirement that was explicitly included in reference to misdemeanor prosecutions was never explicitly worded in reference to the felony DUI prosecutions enacted at a later date.[21] The felony statute at issue in the present case, section 31-27-2.2, driving under the influence of liquor or drugs, death resulting, clearly defines the crime and prescribes the punishment, but never sets forth the methods of proof to be used in determining whether the crime was committed.[22] In light of this statutory reality, the supreme court first faced the question of whether the Legislature intended to exclude nonconsensual test results in DUI felony cases by explicitly including the consent requirement for misdemeanor prosecutions and implicitly including the requirement in felony prosecutions.[23]

In determining that the Legislature did intend to exclude nonconsensual test results in DUI felony cases, the supreme court partly relied on the case of *State v. Timms*[24] in which the statutory

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warrant is found in § 12-5-2, which provides that a warrant may be issued under this chapter to search for and seize any property falling into one of four distinct categories. One such category is property, which is evidence of the commission of a crime. *See DiStefano*, 764 A.2d at 1166-67.

17. *See DiStefano*, 764 A.2d at 1157-66.
18. *See id.*
19. *See id.* at 1159.
20. *See id.*
21. *See id.*
22. *See id.* at 1160.
23. *See id.* at 1161.
24. 505 A.2d 1132 (R.I. 1986).

construction concept of *in pari* material was espoused.[25] While a strong dissent in the present case distinguished the *Timms* case, arguing irreconcilable factual and policy differences and ultimately overruling the holding by a three to two decision, the majority found that, like in *Timms*, statutes that relate to the same subject matter should be construed together for consistency and proper effectuation of the law.[26] *Timms* was a case involving the public safety felony charge section 31-27-1 entitled "Driving so as to endanger, resulting in death."[27] The court in that decision considered whether the actual consent requirement in section 31-27-2 applied, or whether a written consent form was required under the Confidentiality of Health Care Information Act.[28]

While the court in *Timms* noted that the Legislature never explicitly required consent from the defendant prior to taking a blood test and using it as evidence in a criminal prosecution, it was held that the Legislature must have intended section 31-27-1 to include the consent safeguards provided in section 31-27-2, since both statutes concerned the same subject matter.[29] Therefore in the case at hand, just as in *Timms*, the supreme court ruled itself duty bound to effectuate the intent of the Legislature by requiring the consent requirement in section 31-27-2(c) to apply not only to its explicit counterpart of section 31-27-2(a), but also to section 31-27-2.2, a statute so related in subject matter, driving in a manner which threatens public safety, to be similarly situated and similarly subject to the consent requirement.[30] This holding was consistent with the supreme court's recent past findings that similar statutes should be interpreted similarly.[31] Additionally, the court deemed the language found in the consent statute to be clear and unambiguous, thereby leaving no room for statutory interpretation or added meaning to comport with the court's idea of justice, expediency or sound public policy.[32]

The supreme court interpreted the breathalyzer refusal statute, section 31-27-2.1, as it relates to DUI cases before answering

25. *See DiStefano*, 764 A.2d at 1159.
26. *See id.*
27. *Id.*
28. *See id.*
29. *See id.*
30. *See id.* at 1159-60.
31. *See id.* at 1160 (citing State v. DiCicco, 707 A.2d 251 (R.I. 1998)).
32. *See id.* at 1161.

the first two certified questions in the affirmative.[33] This statute relates to any person who operates a motor vehicle in the state and provides that if a person who has been arrested refuses to submit to a chemical test upon request by an officer, "none shall be given."[34] For the first time, the court was in a position to interpret what type of offenses the phrase "none shall be given" actually applies to.[35] The court noted that while the test refusal statute had been interpreted previously regarding the issue of implied consent and its applicability in license revocation proceedings,[36] never before had the court held that the mandate "none shall be given" was inapplicable in DUI cases, felony or misdemeanor.[37] The supreme court acknowledged that refusal and DUI are two separate offenses, and that there are distinct penalties for refusal. Additionally, the court noted that despite refusal, one may still be charged and convicted of DUI based upon evidence other than the results of a chemical test, such as the appearance of intoxication.[38] Yet while distinct offenses, the refusal statute speaks to offenses that include DUI.[39] Specifically in section 31-27-2.1(a), the language is clear that there is a presumption of implied consent for anyone operating a motor vehicle in the state, including those arrested for all types of DUI offenses, and that upon refusal to submit to a chemical test, no test shall be given.[40] Because the language is unambiguous, the statute clearly becomes operative with or without a warrant.[41] No authority is given to force an individual in this situation to submit to a test, whether suspected of a felony or a misdemeanor DUI.[42]

The court interprets the refusal statute as having broader applicability than merely dictating whether a driver may be charged with refusal.[43] By affording protection to all suspects, the court acknowledged the risks that the lack of policy and procedure currently established by the police department or the Attorney Gen-

33. *See id.* at 1161-63.
34. *See id.* at 1161.
35. *See id.* at 1161-63.
36. *See id.* at 1162 (citing State v. Berker, 391 A.2d 107 (R.I. 1978)).
37. *See id.*
38. *See id.* at 1162-63 (citing *DiCicco*, 707 A.2d at 255).
39. *See id.* at 1162.
40. *See id.*
41. *See id.* at 1163.
42. *See id.*
43. *See id.*

eral could have on a person forced to submit to testing.[44] When faced with a resistant driver, a hospital technician could be liable for assault or malpractice. Without proper standards for handling potentially volatile situations, the court preferred to eliminate the need for forced testing until such standards are properly legislated by the General Assembly.[45] Additionally, in interpreting legislative intent behind the implied consent and refusal statute, the court could find no reason for a scheme that affords a driver accused of a misdemeanor greater protections than a driver accused of a more serious felony offense.[46] Accordingly, the court admonished any and all testing of a driver without actual consent after operation of a vehicle and arrest for either a misdemeanor or felony offense.[47]

In addition to requiring consent before taking a chemical test based on public policy,[48] the supreme court held that there can be no valid judicially authorized search warrant for the seizure of bodily fluids when there is no statutory authorization for its issuance.[49] The court conducted an extensive review of other states' procedures, discovering that in the majority of states that admit evidence from a test taken without compliance with the implied consent procedures, there exists a statute that requires or permits the withdrawal of blood in felony DUI cases.[50] State courts having earlier encountered questions similar to those presented to the Rhode Island Supreme Court were found to have barred the forcible seizure of blood and admissibility of test results without a clear and explicit statutory exception.[51] In reaction to these judicial decisions, numerous legislatures passed exceptions to the prohibition of admitting test results taken after refusal.[52] These exception statutes generally allow use of evidence and forcible seizure of blood in DUI cases when there has been a death or serious injury resulting.[53] Some states have further amended statutes to detail

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44. *See id.*
45. *See id.*
46. *See id.* at 1162.
47. *See id.*
48. *See id.* at 1163 (citing State v. Locke, 418 A.2d 843 (R.I. 1980)).
49. *See id.*
50. *See id.* at 1164-66.
51. *See id.*
52. *See id.* at 1166.
53. *See id.*

procedures for forced testing and to provide immunity from liability for medical personnel who perform the tests.[54] Several states would not recognize the authority of a search warrant as a means of getting around the statutory prohibition (of giving a test upon a refusal) when no statute has given specific judicial authority to override the protections afforded an accused.[55] In New Mexico, for example, after finding no exception for a search for a driver's blood alcohol content without driver consent, the court invited the New Mexico Legislature to write an exception into the law to allow for the issuance of a chemical test search warrant.[56] The Legislature promptly responded, and New Mexico's present refusal statute contains an exception which allows for a chemical test search warrant when there is probable cause to believe a person was driving under the influence and caused death or great bodily injury.[57] The Rhode Island Supreme Court, when faced with similar shortcomings of its implied consent statute, determined that no chemical test should be given without consent, regardless of whether a search warrant has been issued.[58] Such will be the law until the Rhode Island Legislature crafts exceptions to the rule and grants authority for search warrants.[59] The court was careful not to tread upon the separation of powers inherent in the legal system and was unwilling to allow exceptions where none were authorized.

The supreme court answered the third certified question in the negative.[60] After holding that officers may not obtain a search warrant even when the driver is suspected of a felony DUI with death resulting, the court held that this decision is not an unconstitutional limitation of the judicial authority to issue search warrants.[61] Being statutory in origin, the superior court has no inherent powers to issue a search warrant, but may only exercise those powers conferred by statute.[62] Under section 12-5-2,[63] there

54. *See id.*
55. *See id.* at 1164-65.
56. *See id.* at 1165 (citing State v. Steele, 601 P.2d 440, 441 (N.M. Ct. App. 1979)).
57. *See id.*; N.M. Stat. Ann. § 66-8-111 (Michie 1998).
58. *See id.* at 1166.
59. *See id.*
60. *See id.* at 1166-70.
61. *See id.*
62. *See id.* at 1167-68.
63. *See id.* at 1166-67. This statute speaks to the issuance of a warrant by any judge of the district court, however, R.I. Gen. Laws § 8-3-6 (1956) gives supreme

are four enumerated circumstances in which recognized classes of property may be searched for and properly seized by warrant.[64] Of the four, the only class of property remotely related to DUI evidence is property that is "evidence of the commission of a crime."[65] However, more convincing was the lack of authority in any other Rhode Island statutes to issue a search warrant for the withdrawal and seizure of blood or other bodily fluids.[66] The General Assembly has extended the scope of judicial warrant authority for specific instances ranging from searches of gambling paraphernalia, to locations connected to animal cruelty, and seizure of obscene material, to driver's licenses under wrongful possession.[67] The Legislature had never explicitly authorized the search and seizure of a person's bodily fluids.[68] This view is in keeping with the spirit of the Rhode Island Constitution. Article 1, section 6, deals with search warrants only in the negative sense.[69] It emphasizes the strong rights of people to be secure against unreasonable searches and seizures and limits the scope of a warrant generally.[70] Consequently, the court chose to err on the side of caution and compliance in limiting the scope of judicial authority to search and seize a person's bodily fluids.

Lastly, while recognizing the *Schmerber v. California*[71] decision as good federal law, the court found Rhode Island law and policy to be more determinative of the present situation.[72] Under *Schmerber*, the United States Supreme Court decided the lengths a state might go without violating the Federal Constitution.[73] The *Schmerber* court held that a warrant requirement was precluded by the necessity to secure evidence before it is compromised by the passage of time and that the attempt to secure evidence of blood-alcohol content in that case was not violative of the Fourth or Four-

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and superior court justices the same power in criminal cases that the district courts have.

64. *See id.*
65. *Id.* at 1167.
66. *See id.*
67. *See id.* at 1168.
68. *See id.*
69. *See id.* at 1167.
70. *See id.*
71. 384 U.S. 757 (1966).
72. *See DiStefano*, 764 A.2d at 1169.
73. *See id.*

teenth Amendment despite the defendant's objection.[74] However, *Schmerber* did not address whether the law in California would have allowed a warrant in the first place.[75] In light of the strong public policy against allowing forced testing without defined procedures, and in light of Rhode Island's deliberate consent requirements and lack of specific statutory authority to issue a warrant to obtain test results, the supreme court believed that a balance must be properly struck.[76] Such a balance was found to exist in the *Timms* decision, and the majority refused to overrule that decision at the risk of treading on legislative ground.[77] The dissent held a different view of *Timms*, and ultimately did reverse it.[78]

The Concurrence

The Chief Justice, in concurring with the majority opinion, lamented that the Legislature had not been more explicit in its statutory directives, as he recognized that whether in the majority or dissent, all agree with the public policy that persons deliberately driving while impaired should not be immune from punishment when contributing to so great a source of human suffering and demise.[79]

The Dissent

Justice Flanders concurred with the court's affirmative answers to questions two (in part) and three, but joined a strong dissent by Justices Bourcier and Lederberg as to question one.[80] The dissent answered questions one and two in the negative; subsequently, question three was a moot issue.[81] The dissent found error with the court's reliance on *Timms*, believing that case to contain misguided dicta relating to a case far removed factually from the issues of consent in the present case.[82] The dissent opined that the *Timms* court failed to appreciate that the purpose behind driver testing is to facilitate conviction and not to grant im-

74. *See id.* at 1168.
75. *See id.* at 1169.
76. *See id.*
77. *See id.*
78. *See id.* at 1175.
79. *See id.* at 1170-71.
80. *See id.* at 1170-71.
81. *See id.* at 1174.
82. *See id.* at 1174-75.

munity from prosecution and conviction.[83] The Legislature's intent, by unambiguously drafting the section 31-27-2(c) consent requirement in reference to misdemeanors and not felonies, was to grant protection to the multitude of minor offenders from invasive, forceful testing procedures.[84]

Historically, the felony statutes were not in contemplation by the Legislature until years later, and therefore the consent requirement was not intentionally applicable to felony offenses.[85] The Legislature could not have intended the same protections to suspected felons, in light of the growing awareness of the evils inherent in the injuries and deaths resulting from impaired drivers.[86] Under the misdemeanor offenses, the penalty for refusal to consent carries with it a small fine and a short license suspension.[87] The dissent found no logic in the majority's holding that the Legislature intended a potential felon to suffer the same small penalty upon refusal, meanwhile avoiding the five (5) to fifteen (15) year sentence that he or she faces with a felony conviction.[88]

The dissent interpreted the DUI felony statute as clear on its face and as not preclusive of testing and use of test results at trial when consent is withheld because no explicit mention is made of such a condition precedent.[89] Similarly, the majority interpreted the same statute as clear on its face, but found the lack of explicit authority to be prohibitive of forced testing or of warrant authority.[90]

CONCLUSION

The admission of results of a breathalyzer, blood or urine tests at trial for a felony violation of driving under the influence, death resulting, was precluded when samples were seized without the defendant's consent. The language in the implied consent statute, relating to violations in the operation of a vehicle, is clear and unambiguous, stating that no test shall be given to any suspect upon arrest after operating a motor vehicle in the state. The supreme

83. *See id.* at 1175.
84. *See id.* at 1181.
85. *See id.* at 1182-83.
86. *See id.* at 1183.
87. *See id.* at 1183-84.
88. *See id.*
89. *See id.* at 1185.
90. *See id.* at 1186.

court interpreted the consent requirement as applicable not only to misdemeanor suspects, but also to felony suspects. The superior court has no authority to issue a search warrant for one's bodily fluids because the Rhode Island Legislature has not specifically granted such authority. Consequently, a search warrant that orders an individual to submit to chemical testing despite refusal holds no power. Such limitations on the judicial authority to issue search warrants is not unconstitutional.

Christy Hetherington

Criminal Procedure. *State v. Ferrara*, 748 A.2d 246 (R.I. 2000). When a trial court fails to act on a defendant's timely motion to reduce his sentence by reason of the court's own error, any ensuing delay cannot as a matter of law be an unreasonable delay barring relief under Rhode Island Superior Court Criminal Procedure Rule 35.

In *State v. Ferrara,*[1] the Rhode Island Supreme Court considered whether a seven-year delay in a trial court's ruling on a timely filed motion to reduce sentence divested the court of jurisdiction to hear the motion, thus, barring relief pursuant to the Rhode Island Superior Court Rules of Criminal Procedure, Rule 35.[2] In *Ferrara*, the court determined that the trial court's failure to timely address a Rule 35 motion due to its own error or inaction, does not violate the reasonable time requirement of Rule 35 and divest jurisdiction over the matter.[3] The court asserted that a prisoner who properly files a Rule 35 motion should not be penalized unfairly because of circumstances beyond his or her control.[4]

FACTS AND TRAVEL

On or about March 22, 1988, the Rhode Island Superior Court sentenced Matthew Ferrara (Ferrara) for various criminal convictions including kidnapping, robbery and rape.[5] On March 7, 1990, the Rhode Island Supreme Court denied and dismissed Ferrara's appeal and affirmed the convictions for all offenses.[6] Subsequently, on or about May 17, 1990, Ferrara filed a timely pro se motion to reduce his sentence.[7] On or about May 21, 1990, Ferrara also filed a motion to appoint counsel and a motion to assign a determination of attorney hearing.[8] The Rhode Island Superior Court did not respond to any of these motions.[9]

On November 19, 1997, approximately seven and one-half years from the date Ferrara filed the motion to reduce his sentence, the state filed an objection to this motion arguing that the

1. 748 A.2d 246 (R.I. 2000).
2. *See id.*
3. *See id.* at 249.
4. *See id.* at 248.
5. *See id.* at 246.
6. *See id.* at 247.
7. *See id.*
8. *See id.*
9. *See id.*

trial court no longer had jurisdiction to hear the matter.[10] The state asserted that Rule 35 of the Rhode Island Superior Court Rules of Criminal Procedure permits the trial court to retain jurisdiction on such a matter only for a *reasonable time* after the expiration of the 120-day jurisdictional requirement.[11]

The state asserted that the seven-year delay in addressing Ferrara's motion was per se unreasonable and, therefore, violated the requirements of Rule 35.[12] The state further contended that a hearing on Ferrara's motion would unfairly prejudice the state and illegally impede the parole board's executive function.[13]

The trial justice sustained the objection, finding that the seven-year delay was unreasonable and thus divested the trial court of its jurisdiction to hear the motion.[14] Ferrara appealed this decision to the Rhode Island Supreme Court.[15]

BACKGROUND

Rule 35 of the Rhode Island Superior Court Rules of Criminal Procedure requires that a motion to reduce sentence be filed within 120 days after the sentence is imposed.[16] The motion to reduce sentence permits a trial justice to evaluate whether a sentence is excessive and to consider any new information that may arise within the 120-day time period.[17] The Rhode Island Supreme Court has interpreted the 120-day period to be a jurisdictional requirement.[18] Thus, in order to properly file a Rule 35 motion, a prisoner must do so within this time period.

Rule 35 also mandates that the trial court address the motion within a reasonable time after such motion is filed.[19] However, the Rhode Island Supreme Court has taken the position that the failure of a trial judge to rule on the motion within the 120-day period

10. *See id.* at 248.

11. *See id.*; Garcia v. United States, 542 A.2d 1237, 1238 (D.C. App. 1988) (Rule 35 provides, in relevant part: "*Reduction of Sentence.* The Court shall determine the motion [to reduce a sentence] within a reasonable time").

12. *See id.*

13. *See id.*

14. *See id.*

15. *See id.*

16. R.I. Super. Ct. R. Crim. P. 35 (1999).

17. *See Ferrara,* 748 A.2d at 248. (citing State v. O'Rourke, 463 A.2d 1328, 1331 (R.I. 1983)).

18. *See id.* (citing State v. Letourneau, 446 A.2d 746, 748 (R.I. 1982)).

19. R.I. Super. Ct. R. Crim. P. 35 (1999).

does not terminate the jurisdiction of the court.[20] The court has asserted that only the time in which to file the motion, not the time in which a ruling must be made should be considered for jurisdictional purposes.[21]

ANALYSIS AND HOLDING

On appeal, the Rhode Island Supreme Court first noted that Ferrara's motion to reduce sentence was timely filed within the 120 day period pursuant to Rule 35.[22] The court then posited the issue in the case: "did the seven year delay in ruling on the motion divest the trial court of its jurisdiction to hear the matter?"[23] The Rhode Island Supreme Court held that the trial court's delay in ruling on the motion did not terminate jurisdiction, and that the matter should be remanded for a determination on the merits.[24]

The supreme court held as a matter of law, when a trial court fails to act on a defendant's timely Rule 35 motion by reason of the court's own error, any resulting delay is not an unreasonable delay divesting jurisdiction and precluding relief under Rule 35.[25] The supreme court further stated that the trial court should favor a liberal reading of the reasonable time requirement pursuant to Rule 35.[26] A prisoner who properly files a Rule 35 motion should not be penalized because of circumstances beyond his or her control.[27]

In the present case, Ferrara timely filed his motion to reduce sentence, followed several days later by a motion to appoint counsel so that he could be represented in the matter.[28] As such, the supreme court held that the trial justice had abused his discretion in finding that the trial court's own failure in timely addressing Ferrara's motion terminated that court's jurisdiction and barred

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20. *See Ferrara*, 748 A.2d at 248; *Letourneau*, 446 A.2d at 747-48.

21. *See id.* (citing *Garcia*, 542 A.2d at 1241 (quoting United States v. House, 808 F.2d 508, 509 (7th Cir. 1986)).

22. *See Ferrara*, 748 A.2d at 248.

23. *Id.*

24. *See id.* at 249

25. *See id.* at 248 (citing Diggs v. United States, 740 F.2d 239, 250 (3rd. Cir. 1984) (Gibbons, J., dissenting)).

26. *See id.*

27. *See id.*

28. *See id.* at 248-49.

relief under Rhode Island Superior Court Rules of Criminal Procedure, Rule 35.[29]

CONCLUSION

In *State v. Ferrara*, the Rhode Island Supreme Court determined that a trial court's jurisdiction to hear a Rule 35 motion could not be terminated by the trial court's own inaction on the matter. The court stated that a prisoner who files a timely Rule 35 motion shall not be denied relief due to circumstances beyond his control, and that the trial court should favor a liberal reading of the reasonable time requirement included in Rule 35.

Patricia K. Holmes

29. *See id.* at 249.