

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 40317/40791

STATE OF IDAHO,	)	2013 Unpublished Opinion No. 707
	)	
Plaintiff-Respondent,	)	Filed: October 11, 2013
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JERALD BRENT BUTLER,	)	<b>THIS IS AN UNPUBLISHED</b>
	)	<b>OPINION AND SHALL NOT</b>
Defendant-Appellant.	)	<b>BE CITED AS AUTHORITY</b>
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Timothy L. Hansen, District Judge.

Judgment of conviction, affirmed; order relinquishing jurisdiction, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Sally J. Cooley, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Before GUTIERREZ, Chief Judge; GRATTON, Judge;  
and MELANSON, Judge

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PER CURIAM

Jerald Brent Butler entered *Alford*<sup>1</sup> pleas to charges of burglary, Idaho Code § 18-1401, and misdemeanor battery, I.C. § 18-903(b). The district court sentenced Butler to a unified sentence of ten years with one year determinate, and retained jurisdiction. Following the period of retained jurisdiction, the district court relinquished jurisdiction (Docket No. 40317). Butler appealed.

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<sup>1</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

Thereafter, Butler filed an Idaho Criminal Rule 35 motion, which the district court denied (Docket No. 40791). Butler appeals asserting that the district court abused its discretion by relinquishing jurisdiction, by failing to reduce his sentence or place him on probation, and by denying his I.C.R. 35 motion.

We note that the decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that Butler has failed to show that the district court abused its discretion by relinquishing jurisdiction.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

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. Gill*, 150 Idaho 183, 186, 244 P.3d 1269, 1272 (Ct. App. 2010). 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 Butler's Rule 35 motion, we conclude no abuse of discretion has been shown.

Therefore, the district court's order relinquishing jurisdiction, Butler's judgment of conviction and sentence, and the district court's order denying Butler's Rule 35 motion are affirmed.