

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 40610 & 40906

STATE OF IDAHO,)	2013 Unpublished Opinion No. 672
)	
Plaintiff-Respondent,)	Filed: September 20, 2013
)	
v.)	Stephen W. Kenyon, Clerk
)	
MARIO KOWAM McCOGGLE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Appeal from judgment of conviction and unified sentence of fifteen years, with a minimum period of confinement of five years, for domestic violence in the presence of a child, dismissed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

Mario Kowam McCoggle pled guilty to domestic violence in the presence of a child. I.C. §§ 18-903(a), 18-918(2), and 18-918(4). In exchange for his guilty plea, an additional charge was dismissed. The district court sentenced McCoggle to a unified term of fifteen years, with a minimum period of confinement of five years. McCoggle appealed his judgment of conviction and sentence in Docket No. 40610. McCoggle filed an I.C.R 35 motion, which the district court denied. McCoggle appealed the denial of his Rule 35 motion in Docket No. 40906.

In his appellant’s brief on appeal, McCoggle’s only issue listed is whether the district court erred in denying his Rule 35 motion in Docket No. 40906. The failure of an appellant to

include an issue in the statement of issues required by I.A.R. 35(a)(4) will eliminate consideration of the issue from appeal. *State v. Crowe*, 131 Idaho 109, 111, 952 P.2d 1245, 1247 (1998). This rule may be relaxed, however, where the issue is argued in the briefing and citation to authority is provided. *Id.* A party waives an issue on appeal if either authority or argument is lacking. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Because McCoggle listed no issue and presented no argument or authority with regard to his appeal from his judgment of conviction or sentence, we dismiss his appeal in Docket No. 40610.

In Docket No. 40906, McCoggle asserts the district court erred in denying his Rule 35 motion. 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. 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 the new information submitted with McCoggle's Rule 35 motion, we conclude no abuse of discretion has been shown.

Therefore, the appeal from McCoggle's judgment of conviction and sentence is dismissed. The district court's order denying McCoggle's Rule 35 motion is affirmed.