

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 42176/42177

STATE OF IDAHO,) 2015 Unpublished Opinion No. 380
)
Plaintiff-Respondent,) Filed: March 2, 2015
)
v.) Stephen W. Kenyon, Clerk
)
JENNIFER ERICKSON-HARTPENCE,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Christopher S. Nye, District Judge.

Orders revoking probation and order denying oral I.C.R. 35 motion, affirmed.

Sara B. Thomas, State Appellate Public Defender; Shawn F. Wilkerson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

These cases are consolidated on appeal. In Docket No. 42176, Jennifer Erickson-Hartpence was convicted of possession of methamphetamine, Idaho Code § 37-2732(c)(1). The district court imposed a unified sentence of seven years with two years determinate, suspended the sentence, and placed Erickson-Hartpence on supervised probation.

In Docket No. 42177, Erickson-Hartpence was convicted of grand theft. The district court imposed a unified sentence of eight years with four years determinate to run concurrently with the sentence in Docket No. 42176, suspended the sentence, and placed Erickson-Hartpence on supervised probation.

Erickson-Hartpence admitted to violating the terms of her probation in Docket No. 42176 and the district court revoked probation, ordered execution of the underlying sentence, and retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Erickson-Hartpence's sentence and placed her on supervised probation. A report of probation violation was filed and the district court continued Erickson-Hartpence on probation with the condition that she successfully complete Drug Court. Erickson-Hartpence was subsequently terminated from the Drug Court program. The State filed petitions for probation violations in both cases and at the disposition hearing, Erickson-Hartpence admitted the violations and orally moved for a reduction of her sentences. The district court revoked probation in both cases and ordered execution of the underlying sentences without reduction. Erickson-Hartpence appeals, contending that the district court erred in failing to retain jurisdiction and in denying her oral request for reduction of her sentences.

The primary purpose of the retained jurisdiction program is to enable the trial court to obtain additional information regarding the defendant's rehabilitative potential and suitability for probation, and probation is the ultimate objective of a defendant who is on retained jurisdiction. *State v. Chapel*, 107 Idaho 193, 687 P.2d 583 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). There can be no abuse of discretion in a trial court's refusal to retain jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *State v. Beebe*, 113 Idaho 977, 979, 751 P.2d 673, 675 (Ct. App. 1988); *Toohill*, 103 Idaho at 567, 650 P.2d at 709. Based upon the information that was before the district court at the time of revocation of Erickson-Hartpence's probation, we hold that the district court did not abuse its discretion when it declined to retain jurisdiction a second time.

Next, we review whether the district court erred in denying Erickson-Hartpence's oral 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). In conducting our review of the grant or denial of a Rule 35 motion, we apply the same criteria used for

determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984). Upon review of the record, including any new information submitted with Erickson-Hartpence's Rule 35 motion, we conclude no abuse of discretion has been shown.

Therefore, the orders revoking Erickson-Hartpence's probation, and the district court's order denying Erickson-Hartpence's Rule 35 motion, are affirmed.