

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42801

STATE OF IDAHO,) 2015 Unpublished Opinion No. 709
)
Plaintiff-Respondent,) Filed: November 16, 2015
)
v.) Stephen W. Kenyon, Clerk
)
BRIAN TODD DAHLIN,) THIS IS AN UNPUBLISHED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.

Judgment of conviction and unified sentence of seven years with three years determinate for possession of a controlled substance, affirmed; order partially granting Rule 35 motion, affirmed.

Sara B. Thomas, State Appellate Public Defender; Reed P. Anderson, 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; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

Brian Todd Dahlin pled guilty to possession of a controlled substance. Idaho Code § 37-2732(c). The district court sentenced Dahlin to a unified term of seven years with four years determinate and retained jurisdiction. Following a period of retained jurisdiction, Dahlin filed an I.C.R 35 motion requesting that the district court reduce Dahlin’s sentence to a unified sentence of seven years with one and one-half years determinate. The district court relinquished jurisdiction and partially granted Dahlin’s Rule 35 motion by reducing Dahlin’s sentence to a

unified term of seven years with three years determinate. Dahlin appeals, asserting that the district court erred by failing to further reduce his sentence.

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 a sentence are well established and need not be repeated here. *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); *Toohill*, 103 Idaho at 568, 650 P.2d at 710.

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 any new information submitted with Dahlin's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order partially granting Dahlin's Rule 35 motion is affirmed.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in ordering execution of Dahlin's modified sentence, without further modification. Therefore, the order partially granting Dahlin's Rule 35 motion, relinquishing jurisdiction, and directing execution of Dahlin's modified sentence is affirmed.