

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 40263

STATE OF IDAHO,)	2013 Unpublished Opinion No. 604
)	
Plaintiff-Respondent,)	Filed: July 30, 2013
)	
v.)	Stephen W. Kenyon, Clerk
)	
KIRSTI MELISSA LAYTON,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Jon J. Shindurling, District Judge.

Order denying Idaho Criminal Rule 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; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Kirsti Melissa Layton pled guilty to possession of a controlled substance (methamphetamine), Idaho Code § 37-2732(c)(1). The district court sentenced Layton to a unified term of five years, with two years determinate, and retained jurisdiction. After a period of retained jurisdiction, the district court released is jurisdiction and executed the underlying sentence. Layton filed an Idaho Criminal Rule 35 motion for reduction of her sentence, which the district court denied. Layton appeals, contending the district court abused its discretion by denying her Rule 35 motion.

A motion for reduction of sentence under Rule 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). An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.* Because no new or additional information in support of Layton's Rule 35 motion was presented, the district court did not abuse its discretion. For the foregoing reasons, the district court's order denying Layton's Rule 35 motion is affirmed.