

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 40709/40710

STATE OF IDAHO,)	2013 Unpublished Opinion No. 694
)	
Plaintiff-Respondent,)	Filed: October 3, 2013
)	
v.)	Stephen W. Kenyon, Clerk
)	
MICHAEL D. LUTTRELL, JR.,)	THIS IS AN UNPUBLISHED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. Melissa Moody, District Judge.

Orders denying I.C.R. 35 motions for reduction of sentences, affirmed.

Sara B. Thomas, State Appellate Public Defender; Spencer J. Hahn, 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; LANSING, Judge;
and GRATTON, Judge

PER CURIAM

In these consolidated appeals, Michael D. Luttrell, Jr. pled guilty to felony driving under the influence of alcohol (docket number 40709). Idaho Code §§ 18-8004, 18-8005(6). The district court sentenced Luttrell to a unified sentence of seven years with two years determinate, suspended the sentence, and placed him on supervised probation for a period of seven years. Luttrell subsequently violated his probation and was convicted of a second felony driving under the influence charge (docket number 40710). The district court revoked Luttrell’s probation in docket number 40709, imposed a concurrent unified sentence of ten years with three years determinate in docket number 40710, and retained jurisdiction in both cases. Following a period of retained jurisdiction, the district court suspended Luttrell’s sentences and placed him on supervised probation. Luttrell again violated his probation and the district court revoked

probation in both cases and ordered the underlying sentences executed, reducing the determinate portion of Luttrell's sentence in docket number 40710 by one year. Luttrell filed Idaho Criminal Rule 35 motions in both cases, which the district court denied. Luttrell appeals, asserting that, mindful of the fact that his Rule 35 motions were not supported by new information, the district court abused its discretion by denying his Rule 35 motions.

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). 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 Luttrell's Rule 35 motions was presented, the district court did not abuse its discretion. For the foregoing reasons, the district court's orders denying Luttrell's Rule 35 motions are affirmed.