

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41440

STATE OF IDAHO,	)	2014 Unpublished Opinion No. 671
	)	
Plaintiff-Respondent,	)	Filed: August 15, 2014
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
DAVID LEE KELLEY,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Molly J. Huskey, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

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

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Before LANSING, Judge; GRATTON, Judge;  
and MELANSON, Judge

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PER CURIAM

David Lee Kelley was convicted of felony driving under the influence, Idaho Code §§ 18-8004, 18-8005. The district court imposed a unified sentence of ten years with five years determinate. Kelley filed an Idaho Criminal Rule 35 motion, which the district court denied. Kelley appeals.

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); *Lopez*, 106 Idaho at 449-51, 680 P.2d at 871-73. Upon review of the record, including any new information submitted with Kelley's Rule 35 motion, we conclude no abuse of discretion has been shown. The parties dispute whether the district court lost jurisdiction in this case by a delay in acting on Kelley's motion. Because resolution of that issue would not alter the outcome in this case, we need not address it. Even assuming the district court possessed jurisdiction, Kelly has not shown error in the denial of the motion. Therefore, the district court's order denying Kelley's Rule 35 motion is affirmed.