

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42244

STATE OF IDAHO,) 2014 Unpublished Opinion No. 858
)
Plaintiff-Respondent,) Filed: December 12, 2014
)
v.) Stephen W. Kenyon, Clerk
)
ROBERT BALLARD, aka NEAL) THIS IS AN UNPUBLISHED
BALLARD, BOB BALLARD, ROBERT) OPINION AND SHALL NOT
NEAL BALLARD, JR.,) BE CITED AS AUTHORITY
)
Defendant-Appellant.)
_____)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. George A. Southworth, District Judge.

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

Sara B. Thomas, State Appellate Public Defender; Ben P. McGreevy, 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 MELANSON, Judge

PER CURIAM

Robert Ballard, aka Neal Ballard, Bob Ballard, Robert Neal Ballard, Jr. pled guilty to felony driving under the influence. I.C. §§ 18-8004, 18-8005. The district court sentenced Ballard to a unified term of eight years, with a minimum period of confinement of three years. The district court retained jurisdiction. Ballard appealed from his judgment of conviction and the order of retained jurisdiction, arguing the district court abused its discretion in retaining jurisdiction rather than ordering probation. In an unpublished opinion, this Court affirmed Ballard's sentence. *See State v. Ballard*, Docket No. 40736 (Ct. App. Sept. 4, 2013). Thereafter

the district court placed Ballard on probation. However, later Ballard admitted to violating the terms of his probation. The district court revoked probation and ordered execution of Ballard's original sentence. Ballard filed an I.C.R. 35 motion, which the district court denied. Ballard 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). Upon review of the record, including any new information submitted with Ballard's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Ballard's Rule 35 motion is affirmed.