

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42449

STATE OF IDAHO,) 2015 Unpublished Opinion No. 376
)
Plaintiff-Respondent,) Filed: March 2, 2015
)
v.) Stephen W. Kenyon, Clerk
)
BENJAMIN GARY COTTLE,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Franklin County. Hon. Mitchell W. Brown, District Judge.

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

Sara B. Thomas, State Appellate Public Defender; Shawn F. Wilkerson, 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; LANSING, Judge;
and GUTIERREZ, Judge

PER CURIAM

Benjamin Gary Cottle pled guilty to issuing a check without funds. I.C. § 18-3106(a). In exchange for his guilty plea, an additional charge was dismissed. The district court sentenced Cottle to a unified term of three years, with a minimum period of confinement of two years. However, the district court suspended the sentence and placed Cottle on probation. Twice Cottle admitted to violating the terms of his probation, and twice the district court continued Cottle's probation. Following his third admission to violation of his probation, the district court revoked probation and ordered execution of Cottle's original sentence but retained jurisdiction. Cottle orally made an I.C.R 35 motion, which the district court denied. Cottle 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 Cottle's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Cottle's Rule 35 motion is affirmed.