

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42509

STATE OF IDAHO, ) 2015 Unpublished Opinion No. 448  
 )  
 Plaintiff-Respondent, ) Filed: March 31, 2015  
 )  
 v. ) Stephen W. Kenyon, Clerk  
 )  
 ERRON ERNEST MARKS, ) THIS IS AN UNPUBLISHED  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 Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Judgment of conviction and unified sentence of seven years with three years determinate for attempted grand theft by deception, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Maya P. Waldron, 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 MELANSON, Chief Judge; LANSING, Judge;  
and GUTIERREZ, Judge

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PER CURIAM

Erron Ernest Marks was convicted of attempted grand theft by deception, Idaho Code §§ 18-2403(2)(a), 18-2407(1)(b), 18-2409, 18-306. The district court imposed a unified sentence of seven years with a three-year determinate term and retained jurisdiction. Following the period of retained jurisdiction, the district court relinquished jurisdiction. At the jurisdictional review hearing, Marks made an oral Idaho Criminal Rule 35 motion for a reduction of sentence, which

the district court denied. Marks appeals, challenging his sentence and the denial of his Rule 35 motion.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Marks's Rule 35 motion. 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 Marks's Rule 35 motion, we conclude no abuse of discretion has been shown.

Accordingly, Marks's judgment of conviction and sentence, and the district court's order denying Marks's Rule 35 motion, are affirmed.