

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42565

STATE OF IDAHO,) 2015 Unpublished Opinion No. 635
)
Plaintiff-Respondent,) Filed: September 16, 2015
)
v.) Stephen W. Kenyon, Clerk
)
ELIJAH DEAN MILLER,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the First Judicial District, State of Idaho, Shoshone County. Hon. Fred M. Gibler, District Judge.

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

Sara B. Thomas, State Appellate Public Defender; Eric D. Fredericksen, 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; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

Elijah Dean Miller pled guilty to criminal possession of a financial transaction card and burglary. Idaho Code §§ 18-3125(1), 18-1401. The district court sentenced Miller to concurrent unified sentences of five years with two years determinate and retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Miller's sentences and placed him on supervised probation for two years. Subsequently, Miller admitted to violating his probation and the district court revoked his probation and executed the underlying sentences. Miller filed an I.C.R 35 motion for reduction of his sentences, which the district court denied. Miller appeals asserting that the district court abused its discretion by denying his I.C.R. 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. Gill*, 150 Idaho 183, 186, 244 P.3d 1269, 1272 (Ct. App. 2010). 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 information in support of Miller's Rule 35 motion was presented, the district court did not abuse its discretion. For the foregoing reasons, the district court's order denying Miller's Rule 35 motion is affirmed.