

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42933

STATE OF IDAHO,) 2015 Unpublished Opinion No. 591
)
Plaintiff-Respondent,) Filed: August 13, 2015
)
v.) Stephen W. Kenyon, Clerk
)
CHERYL DIANNE LEONTINE,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Thomas F. Neville, District Judge.

Order denying I.C.R. 35 motion, 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 MELANSON, Chief Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

In August 2004, Cheryl Dianne Leontine pled guilty to burglary, Idaho Code § 18-1401. The district court imposed a unified sentence of ten years with one year determinate, suspended the sentence, and place Leontine on probation for a period of ten years. In December 2004, Leontine filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. Leontine subsequently admitted to violating her probation and the district court ordered the underlying sentence executed and retained jurisdiction. Following the period of retained jurisdiction, the district court relinquished jurisdiction. In December 2014, Leontine filed a successive Rule 35 motion for a reduction of sentence which the district court denied. Mindful that Rule 35 prohibits successive motions for a reduction of sentence, Leontine

nevertheless asserts that the district court abused its discretion by denying her second Rule 35 motion.

Initially, we note that a lower court's decision to grant or deny a Rule 35 motion will not be disturbed in the absence of an abuse of discretion. *State v. Villarreal*, 126 Idaho 277, 281, 882 P.2d 444, 448 (Ct. App. 1994). 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, 822 P.2d 1011 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 680 P.2d 869 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). Even assuming the district court had jurisdiction to entertain her filed motion, Leontine has the burden of showing a clear abuse of discretion on the part of the district court in failing to reduce the sentence on her Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Leontine has failed to show such an abuse of discretion. Accordingly, the order of the district court denying Leontine's successive Rule 35 motion is affirmed.