

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 43424

STATE OF IDAHO,) 2016 Unpublished Opinion No. 569
)
Plaintiff-Respondent,) Filed: June 16, 2016
)
v.) Stephen W. Kenyon, Clerk
)
TONY THOMAS CUELLAR,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Jonathan P. Brody, District Judge.

Judgment of conviction and concurrent unified sentences of seven years, with minimum periods of confinement of two years, for two counts of trafficking in marijuana and one count of conspiracy to drug trafficking in marijuana, affirmed; order denying I.C.R. 35 motion for reduction of sentences, affirmed.

Sara B. Thomas, State Appellate Public Defender; Jason C. Pintler, 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; GRATTON, Judge;
and HUSKEY, Judge

PER CURIAM

Tony Thomas Cuellar was found guilty of two counts of trafficking in marijuana, I.C. § 37-2732B(a)(1)(A), and one count of conspiracy to drug trafficking in marijuana, I.C. §§ 37-2732B(a)(1)(A) and 18-1701. The district court sentenced Cuellar to concurrent unified terms of seven years, with minimum periods of confinement of two years. Cuellar filed an I.C.R 35 motion, which the district court denied. Cuellar appeals.

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 Cuellar'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 consider the entire record and 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, we conclude no abuse of discretion has been shown.

Therefore, Cuellar's judgment of conviction and sentences, and the district court's order denying Cuellar's Rule 35 motion, are affirmed.