

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 43509

STATE OF IDAHO,) 2016 Unpublished Opinion No. 479
)
Plaintiff-Respondent,) Filed: April 12, 2016
)
v.) Stephen W. Kenyon, Clerk
)
ROLANDO FUENTES,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Thomas J. Ryan, District Judge.

Order denying Rule 35 motion, affirmed.

Sara B. Thomas, State Appellate Public Defender; Sally J. Cooley, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before MELANSON, Chief Judge; GRATTON, Judge;
and HUSKEY, Judge

PER CURIAM

Rolando Fuentes pled guilty to grand theft. Idaho Code §§ 18-2403(1), 18-2407(1)(b). Pursuant to the plea agreement, Fuentes waived “the right to move the Court to reconsider and reduce his sentence pursuant to Idaho Criminal Rule 35.” The district court sentenced Fuentes to a term of eight years with three years determinate, suspended the sentence, and placed Fuentes on probation. Subsequently, Fuentes was found to have violated the terms of his probation and the district court revoked probation, ordered his sentence executed, and retained jurisdiction. Thereafter, the district court relinquished jurisdiction. Fuentes filed a motion to reconsider the order relinquishing jurisdiction. The State objected on the grounds that Fuentes had waived any

right to have his sentence reconsidered pursuant to Rule 35. The district court agreed and denied the motion.

Fuentes argues that the district court erred in determining that he had waived his right to file the Rule 35 motion. He contends that the motion sought only reconsideration of relinquishment of jurisdiction and did not ask the court to “reconsider and reduce his sentence pursuant to Idaho Criminal Rule 35.” Fuentes asserts that an order relinquishing jurisdiction is not a “sentence.” However, the motion sought to suspend his sentence and place him on probation. It was, therefore, a motion to reconsider and reduce his sentence. As stated in *State v. Knutsen*, 138 Idaho 918, 921, 71 P.3d 1065, 1068 (Ct. App. 2003):

Rule 35 authorizes a district court to diminish, lessen the severity of, or make more temperate a defendant’s sentence. An order placing defendant on probation lessens the severity of a defendant’s sentence and thus falls within the district court’s authority granted by Rule 35.

The district court did not err in determining that Fuentes waived the right to file the Rule 35 motion in the plea agreement. Therefore, the district court’s order denying Fuentes’s Rule 35 motion is affirmed.