

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 43622

STATE OF IDAHO, ) 2016 Unpublished Opinion No. 599  
 )  
Plaintiff-Respondent, ) Filed: July 15, 2016  
 )  
v. ) Stephen W. Kenyon, Clerk  
 )  
TYLER JACOB BROTHERTON, ) THIS IS AN UNPUBLISHED  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, Washington County. Hon. Susan E. Wiebe, District Judge.

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

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Before MELANSON, Chief Judge; GUTIERREZ, Judge;  
and GRATTON, Judge  
\_\_\_\_\_

PER CURIAM

Tyler Jacob Brotherton pled guilty to felony eluding a peace officer. I.C. § 49-1404(2). The district court sentenced Brotherton to a unified term of five years, with a minimum period of confinement of two years. The district court retained jurisdiction concurrently with an unrelated case. Ultimately, the district court relinquished jurisdiction. Brotherton filed an I.C.R 35 motion for reduction of his sentence, which the district court granted by reducing Brotherton's sentence to a unified term of four and one-half years, with a minimum period of confinement of one and one-half years. Brotherton appeals.

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). Since the district court later modified Brotherton's sentence, pursuant to his Rule 35 motion, we will only review Brotherton's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992).

Brotherton has the burden of showing a clear abuse of discretion on the part of the district court in failing to further reduce the sentences on Brotherton's Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Brotherton has failed to show such an abuse of discretion. Accordingly, the order of the district court granting Brotherton's Rule 35 motion is affirmed.