

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 43753

STATE OF IDAHO,) 2016 Unpublished Opinion No. 538
)
Plaintiff-Respondent,) Filed: May 18, 2016
)
v.) Stephen W. Kenyon, Clerk
)
TRISTAN DOUGLAS NUBY,) THIS IS AN UNPUBLISHED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. Richard D. Greenwood, District Judge.

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

Sara B. Thomas, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

Before GUTIERREZ, Judge; GRATTON, Judge;
and HUSKEY, Judge

PER CURIAM

Tristan Douglas Nuby pled guilty to domestic violence, aggravated battery, and felony violation of a no contract order. Idaho Code §§ 18-903(a), 18-918(2), 18-907(a), and 18-920. The district court sentenced Nuby to a unified term of ten years with three years determinate for domestic violence; a concurrent five-year indeterminate sentence for aggravated battery; and a consecutive five-year indeterminate sentence for felony violation of a no contact order. Following a period of retained jurisdiction, the district court suspended Nuby's sentences and placed him on supervised probation for fifteen years. Nuby violated his probation, the district court revoked his probation, ordered the underlying sentences executed, and retained jurisdiction a second time. Following the second period of retained jurisdiction, the district court again

suspended Nuby's sentences and again placed him on supervised probation. Subsequently, Nuby admitted to violating his probation a second time and the district court revoked his probation and executed the underlying sentences. At the disposition hearing, Nuby's counsel requested the district court to reduce the indeterminate portion of Nuby's sentences. The district court denied Nuby's Idaho Criminal Rule 35 motion. Nuby appeals asserting that the district court abused its discretion by denying his 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). Upon review of the record, including any new information submitted with Nuby's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Nuby's Rule 35 motion is affirmed.