

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44263

STATE OF IDAHO,	)	2016 Unpublished Opinion No. 790
	)	
Plaintiff-Respondent,	)	Filed: November 28, 2016
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
BRANDON LEE STERLING,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Jason D. Scott, District Judge.

Order denying Idaho Criminal Rule 35 motion, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Elizabeth A. Allred, 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; GRATTON, Judge;  
and HUSKEY, Judge

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PER CURIAM

Brandon Lee Sterling pleaded guilty to possession of a controlled substance with the intent to deliver, felony, Idaho Code § 37-2732(a). The district court imposed a unified thirteen-year sentence, with three years determinate. Sterling timely appealed. This court affirmed the sentence in an unpublished opinion. *State v. Sterling*, Docket No. 43935 (Ct. App. June 29, 2016). Sterling filed an Idaho Criminal Rule 35 motion, which the district court denied. Sterling appeals.

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 an I.C.R. 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). An appeal from the denial of an I.C.R. 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.* Because no new or additional information in support of Sterling's I.C.R. 35 motion was presented, the district court did not abuse its discretion. For the foregoing reasons, the district court's order denying Sterling's I.C.R. 35 motion is affirmed.