

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 44287, 44288 & 44289

STATE OF IDAHO,) 2017 Unpublished Opinion No. 350
)
Plaintiff-Respondent,) Filed: February 3, 2017
)
v.) Stephen W. Kenyon, Clerk
)
BLAKE EMERSON LEE,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Joel E. Tingey, District Judge.

Orders denying I.C.R. 35 motions for reduction of sentences, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Russell J. Spencer, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

In Docket No. 44287, Blake Emerson Lee pled guilty to one count of grand theft by possession of stolen property. I.C. § 18-2403(4). The district court sentenced Lee to a unified term of five years, with a minimum period of confinement of one and one-half years. In Docket No. 44288, Lee pled guilty to two counts of grand theft. I.C. § 18-2403(1). The district court sentenced Lee to concurrent unified terms of six years, with minimum periods of confinement of

two years.¹ In Docket No. 44289, Lee pled guilty to one count of grand theft. I.C. § 18-2403(1). The district court sentenced Lee to a unified term of seven years, with a minimum period of confinement of two and one-half years. Lee's sentences were ordered be served concurrently. The district court, however, retained jurisdiction in all three cases and sent Lee to participate in the rider program. Thereafter, the district court relinquished jurisdiction and ordered Lee's sentences into execution. Lee filed I.C.R 35 motions, which the district court denied. Lee 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 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 Lee's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's orders denying Lee's Rule 35 motions are affirmed.

¹ The district court's oral pronouncement indicates that the Lee's sentences for these two counts is concurrent unified terms of six years, with minimum periods of confinement of two years. However, the written judgment shows that the sentences are concurrent unified terms of four years, with minimum periods of confinement of two years. It is the oral pronouncement of sentence that is controlling. *State v. Dreier*, 139 Idaho 246, 254, 76 P.3d 990, 998 (Ct. App. 2003). Therefore, we view Lee's sentences as concurrent unified terms of six years, with minimum periods of confinement of two years.