

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44302

STATE OF IDAHO,) 2016 Unpublished Opinion No. 773
)
Plaintiff-Respondent,) Filed: November 9, 2016
)
v.) Stephen W. Kenyon, Clerk
)
ROBERT MICHELL WENGERT,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

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

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

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

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

PER CURIAM

Robert Michell Wengert pled guilty to attempted strangulation. I.C. § 18-923. In exchange for his guilty plea, an additional charge was dismissed and the state agreed not to pursue an enhancement or additional charges. The district court sentenced Wengert to a unified term of ten years, with a minimum period of confinement of five years, to run concurrent with an unrelated sentence. The district court retained jurisdiction and sent Wengert to participate in the rider program. Following successful completion of his rider, the district court suspended the sentence and placed Wengert on probation. Wengert twice admitted to violating the terms of his

probation. The district court subsequently revoked probation and ordered execution of the sentence. Wengert filed an I.C.R 35 motion, which the district court denied. Wengert 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 Wengert's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Wengert's Rule 35 motion is affirmed.