

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44459

STATE OF IDAHO,)	2017 Unpublished Opinion No. 366
)	
Plaintiff-Respondent,)	Filed: February 10, 2017
)	
v.)	Stephen W. Kenyon, Clerk
)	
DAVID KENNETH SANKEY,)	THIS IS AN UNPUBLISHED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. Patrick H. Owen, 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.

Before GUTIERREZ, Judge; MELANSON, Judge;
and HUSKEY, Judge

PER CURIAM

David Kenneth Sankey pleaded guilty to aggravated assault, Idaho Code § 18-909(b), 18-905(b). The district court imposed a unified five-year sentence, with one and one-half years determinate, but after a period of retained jurisdiction, suspended the sentence and placed Sankey on probation. Subsequently, Sankey admitted to violating the terms of probation, and the district court consequently revoked probation and ordered execution of the original sentence. Sankey filed an Idaho Criminal Rule 35 motion which the district court denied. Sankey appeals, contending that the district court abused its discretion in denying his I.C.R. 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 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 Sankey'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 Sankey's I.C.R. 35 motion is affirmed.