

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44682

STATE OF IDAHO, ) 2017 Unpublished Opinion No. 591  
)  
Plaintiff-Respondent, ) Filed: September 22, 2017  
)  
v. ) Karel A. Lehrman, Clerk  
)  
TIMOTHY RAY GREENE, ) THIS IS AN UNPUBLISHED  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 Seventh Judicial District, State of Idaho, Fremont County. Hon. Gregory W. Moeller, District Judge.

Order granting, in part, Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Brian R. Dickson, 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 GRATTON, Chief Judge; GUTIERREZ, Judge;  
and HUSKEY, Judge

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PER CURIAM

Timothy Ray Greene entered an *Alford*<sup>1</sup> plea to felony injury to a child. Idaho Code § 18-1501(1). The district court sentenced Greene to a unified term of ten years with six years determinate. Greene filed an Idaho Criminal Rule 35 motion, which the district court granted, in part, reducing Greene's sentence to a unified term of ten years with four years determinate. Greene appeals asserting that the district court abused its discretion by not further reducing his sentence.

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<sup>1</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

Greene argues that the court's initial imposition of sentence was based upon a clearly erroneous finding regarding Greene's mental health. This argument is raised for the first time on appeal. Generally, issues not raised below may not be considered for the first time on appeal. *State v. Fodge*, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992).

We turn then to review of the denial of the I.C.R. 35 motion upon the arguments and information presented therewith. A motion for reduction of sentence under Rule 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 Greene's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order granting Greene's Rule 35 motion, in part, is affirmed.