

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 45038

STATE OF IDAHO, ) 2018 Unpublished Opinion No. 425  
)  
Plaintiff-Respondent, ) Filed: April 18, 2018  
)  
v. ) Karel A. Lehrman, Clerk  
)  
THOR FITZGERALD WARE, JR., ) THIS IS AN UNPUBLISHED  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, Madison County. Hon. Gregory W. Moeller, District Judge.

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

Eric D. Fredericksen, State Appellate Public Defender; Andrea W. Reynolds, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

---

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

---

PER CURIAM

Thor Fitzgerald Ware, Jr. pled guilty to rape, Idaho Code § 18-6101(2). The district court imposed a unified sentence of twelve years, with a minimum period of confinement of three years, and retained jurisdiction. After the rider, the district court relinquished jurisdiction. Ware filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court granted, reducing Ware's sentence to ten years, with a minimum period of confinement of two and one-half years. Ware appeals, asserting that the district court abused its discretion in declining to further reduce his sentence.

Initially, we note that a lower court's decision to grant or deny a Rule 35 motion will not be disturbed in the absence of an abuse of discretion. *State v. Villarreal*, 126 Idaho 277, 281, 882 P.2d 444, 448 (Ct. App. 1994). Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 822 P.2d 1011 (Ct. App. 1991); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Since the district court later modified Ware's sentence, pursuant to his Rule 35 motion, we will only review Ware's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992).

Ware has the burden of showing a clear abuse of discretion on the part of the district court in failing to further reduce the sentence on his Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Ware has failed to show such an abuse of discretion. Accordingly, the order of the district court granting Ware's Rule 35 motion is affirmed.