

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 45229

STATE OF IDAHO,) 2018 Unpublished Opinion No. 463
)
Plaintiff-Respondent,) Filed: May 21, 2018
)
v.) Karel A. Lehrman, Clerk
)
JOE MICHAEL ATENCIO,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Davis F. VanderVelde, District Judge.

Judgment of conviction and unified sentence of twenty years, with a minimum period of confinement of seven years, for felony driving under the influence and being a persistent violator, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Ben P. McGreevy, 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

Joe Michael Atencio was found guilty of felony driving under the influence, I.C. §§ 18-8004 and 18-8005, and being a persistent violator, I.C. § 19-2514. The district court sentenced Atencio to a unified term of twenty years, with a minimum period of confinement of seven years. Atencio filed an I.C.R 35 motion, which the district court denied. Atencio appeals, claiming the district court abused its sentencing discretion.

Sentencing is a matter for the trial court's discretion. 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, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (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). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Atencio's Rule 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 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 Atencio's Rule 35 motion, we conclude no abuse of discretion has been shown.

Therefore, Atencio's judgment of conviction and sentence, and the district court's order denying Atencio's Rule 35 motion, are affirmed.