

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 46072 & 46073

STATE OF IDAHO,)
)
) **Filed: September 3, 2019**
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) **Karel A. Lehrman, Clerk**
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) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Richard S. Christensen, District Judge.

Judgment of conviction and sentence, and orders denying Idaho Criminal Rule 35 motions, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Reed P. Anderson, Deputy Appellate Public Defender, Boise, for appellant.

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

Before HUSKEY Judge; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

In Docket No. 46072, Sethen Simeon Dyerson was found guilty of grand theft, Idaho Code §§ 18-2403(a), 18-2407(1)(b)(1), 18-204, felony eluding a police officer, I.C. § 49-1401(2), misdemeanor destruction of evidence, I.C. § 18-2603, and a persistent violator enhancement, I.C. § 19-2514. The district court sentenced Dyerson to a unified eight-year sentence, with five years determinate, for grand theft, and a unified five-year sentence, with three years determinate for eluding. Dyerson was given credit for time served for the misdemeanor charge. The sentences were ordered to run concurrent, and the district court retained jurisdiction. After a period of retained jurisdiction, the district court suspended the sentences and placed

Dyerson on probation. Subsequently, Dyerson admitted to violating the terms of the probation, which included the criminal charges in Docket No. 46073, and the district court consequently revoked probation and ordered execution of the original sentences.

In Docket No. 46073, Dyerson pleaded guilty to two counts of possession of a controlled substance, I.C. § 37-2732(c)(1), misdemeanor possession of marijuana, I.C. § 37-2732(c)(3), misdemeanor drug paraphernalia, I.C. § 37-2734A(1), and misdemeanor resisting or obstructing officers, I.C. § 18-705. The district court imposed concurrent, unified seven-year sentences, with three years determinate, for the two felony possession of a controlled substance charges and credit for time served for the misdemeanor charges. The sentences were ordered to run concurrently with the sentences in Docket No. 46072. Dyerson filed an I.C.R 35 motion in each case, which the district court denied. Dyerson appeals and asserts the district court abused its discretion by imposing sentence in Docket No. 46073 and in denying his Rule 35 motions.

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 Dyerson's Rule 35 motions. 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 Dyerson's Rule 35 motions, we conclude no abuse of discretion has been shown.

Therefore, the judgment of conviction and sentence in Docket No. 46073 and the district court's orders denying Dyerson's Rule 35 motions, are affirmed.