

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46090

STATE OF IDAHO,)	
)	Filed: December 24, 2018
Plaintiff-Respondent,)	
)	Karel A. Lehrman, Clerk
v.)	
)	THIS IS AN UNPUBLISHED
BENITO ANDRES HARVEY,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Defendant-Appellant.)	
)	

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

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

Eric D. Fredericksen, State Appellate Public Defender; Kimberly A. Coster, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Benito Andres Harvey pled guilty to unlawful discharge of a weapon at a house. Idaho Code § 18-3317. The district court sentenced Harvey to a unified term of fifteen years with seven years determinate and retained jurisdiction. Following the period of retained jurisdiction, the district court placed Harvey on probation. Harvey violated probation, and the court again retained jurisdiction followed by a period of probation. Harvey again violated the terms of the probation. Following Harvey’s third probation violation, the district court ordered execution of the original sentence. Harvey filed an Idaho Criminal Rule 35 motion for reduction of sentence,

which the district court denied. Harvey appeals asserting that the district court abused its discretion by denying his 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 Harvey's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Harvey's Rule 35 motion is affirmed.