

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46369

STATE OF IDAHO,)
)
) **Filed: August 2, 2019**
)
) **Karel A. Lehrman, Clerk**
)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Order denying Idaho Criminal Rule 35 motion, 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; HUSKEY, Judge;
and BRAILSFORD, Judge

PER CURIAM

Marlene Sue Herrera pleaded guilty to possession of a controlled substance, methamphetamine, Idaho Code § 37-2732(c)(1). The district court imposed a unified five-year sentence, with two years determinate, suspended the sentence, and placed Herrera on a term of probation. Herrera violated the terms of her probation and the district court executed the underlying sentence, but retained jurisdiction. Herrera filed an Idaho Criminal Rule 35 motion, which the district court denied. After Herrera completed her rider, the district court relinquished jurisdiction. Herrera appeals and asserts the district court abused its discretion by denying her I.C.R. 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 an I.C.R. 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). An appeal from the denial of an I.C.R. 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.* Because no new or additional information in support of Herrera's I.C.R. 35 motion was presented, the district court did not abuse its discretion in denying the I.C.R. 35 motion. For the foregoing reasons, the district court's order denying Herrera's I.C.R. 35 motion is affirmed.