

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46498

STATE OF IDAHO,	)
	) <b>Filed: August 28, 2019</b>
<b>Plaintiff-Respondent,</b>	)
	) <b>Karel A. Lehrman, Clerk</b>
v.	)
	) <b>THIS IS AN UNPUBLISHED</b>
<b>LARRY BURTON PENKUNIS,</b>	) <b>OPINION AND SHALL NOT</b>
	) <b>BE CITED AS AUTHORITY</b>
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Richard S. Christensen, District Judge.

Order denying I.C.R. 35 motion to further reduce sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

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

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 Before GRATTON, Chief Judge; LORELLO, Judge;  
 and BRAILSFORD, Judge  
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PER CURIAM

Larry Burton Penkunis was found guilty of delivery of a controlled substance. Idaho Code § 37-2732(a)(1)(A). The district court sentenced Penkunis to a unified term of twenty-five years with twelve years determinate. Following a hearing on the Rule 35 motion, the district court granted Penkunis’s Rule 35 motion, in part, reducing his sentence to a unified term of twenty-five years with ten years determinate. Penkunis appeals asserting that the district court abused its discretion by not further reducing his sentence.

The State asserts that the district court lost jurisdiction to rule on the motion because the district court decided the motion 116 days after it was filed and 170 days after the judgment of conviction. A court may correct a sentence within the 120 days after the filing of a judgment of

conviction. I.C.R. 35(b). However, the district court is actually given a reasonable time after the expiration of the 120-day period to rule on the motion. *State v. Veloquio*, 141 Idaho 154, 155, 106 P.3d 480, 481 (Ct. App. 2005). Under the circumstances here, the district court did not lose jurisdiction. A hearing on the motion was originally scheduled within the 120-day period, but continued, including a continuance occasioned by a last minute filing by the State, necessitated the delay which was not unreasonable.

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 Penkunis's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Penkunis's Rule 35 motion is affirmed.