

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46532

STATE OF IDAHO,	)
	) <b>Filed: September 23, 2019</b>
<b>Plaintiff-Respondent,</b>	)
	) <b>Karel A. Lehrman, Clerk</b>
v.	)
	) <b>THIS IS AN UNPUBLISHED</b>
<b>TYLER JOSEPH FOX,</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. Scott Wayman, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence, 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.

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

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PER CURIAM

Tyler Joseph Fox pled guilty to possession of a controlled substance. I.C. § 37-2732(c)(1)(F). In exchange for his guilty plea, an additional charge was dismissed including an allegation that he is a persistent violator. The district court sentenced Fox to a unified term of seven years, with a minimum period of confinement of three years. However, the district court retained jurisdiction and sent Fox to participate in the rider program. Thereafter, the district court relinquished jurisdiction and ordered execution of Fox’s sentence. Fox filed an I.C.R. 35 motion, which the district court denied. Fox appeals, arguing that the district court erred in denying his Rule 35 motion.

We first consider the State's argument that we should decline to consider Fox's argument pursuant to the invited error doctrine because Fox's sentence was stipulated as part of the plea agreement. We decline to foreclose consideration of Fox's claim on this basis. Although Fox received the agreed upon sentence, nothing in the plea agreement prevented him from filing a Rule 35 motion after the district court relinquished jurisdiction.

A motion for reduction of sentence under Rule 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 Fox's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Fox's Rule 35 motion is affirmed.