

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46710

STATE OF IDAHO,)
) **Filed: August 9, 2019**
) **Plaintiff-Respondent,**)
) **Karel A. Lehrman, Clerk**
v.)
) **THIS IS AN UNPUBLISHED**
OLIVIA BAXTER,) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
) **Defendant-Appellant.**)
)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Jerome County. Hon. Eric J. Wildman, District Judge.

Order denying I.C.R. 35 motion for reduction of sentence and motion for appointment of counsel, 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 LORELLO, Judge

PER CURIAM

Olivia Baxter pled guilty to possession of methamphetamine. Idaho Code § 37-2732(c)(1). The district court sentenced Baxter to a unified term of five years with three years determinate, suspended the sentence, and placed Baxter on probation for three years. Baxter subsequently violated the conditions of her probation and the district court revoked her probation and executed the underlying sentence and retained jurisdiction. Several weeks later the district court relinquished jurisdiction. Baxter filed an Idaho Criminal Rule 35 motion for a reduction of sentence and a motion for appointment of counsel, which the district court denied, noting that Baxter had failed to provide any new or additional information to support her motion. Baxter

appeals asserting that the district court abused its discretion by denying her I.C.R. 35 motion for a reduction of sentence and her motion for appointment of counsel.

Idaho Code § 19-852(2)(c) governs the appointment of counsel in post-judgment criminal proceedings and requires that counsel be appointed to pursue a Rule 35 motion, “unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense and is therefore a frivolous proceeding.” I.C. § 19-852(2)(c); *see also State v. Wage*, 125 Idaho 522, 523, 873 P.2d 167, 168 (Ct. App. 1994). A Rule 35 motion is frivolous if, based on the contents of the motion itself and any accompanying documentation that may support the motion, the defendant fails to show that the sentence was excessive when pronounced or in view of additional information presented with the motion for reduction. *Wade*, 125 Idaho at 526, 873 P.2d at 170.

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, we conclude no abuse of discretion has been shown. Therefore, the district court’s order denying Baxter’s Rule 35 motion and motion for appointment of counsel is affirmed.