

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46719

STATE OF IDAHO,)
) **Filed: July 1, 2019**
) **Plaintiff-Respondent,**)
) **Karel A. Lehrman, Clerk**
v.)
) **THIS IS AN UNPUBLISHED**
) **CARLOS HERARDO LOPEZ,**) **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. Gene A. Petty, District Judge.

Order relinquishing jurisdiction, affirmed; order denying I.C.R. 35 motion for reduction of sentence, 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

Carlos Herardo Lopez pled guilty to possession of a controlled substance. Idaho Code § 37-2732(c)(1). The district court sentenced Lopez to a unified term of seven years with three years determinate, suspended the sentence and placed Lopez on probation for a period of three years. Subsequently, Lopez admitted to violating the terms of the probation and the district court revoked Lopez's probation, executed his sentence, and retained jurisdiction. After Lopez completed his rider, the district court relinquished jurisdiction. Lopez also filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. Lopez

appeals, claiming that the district court erred by relinquishing jurisdiction and by denying his I.C.R. 35 motion for a reduction of sentence.

We note that the decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that Lopez has failed to show that the district court abused its discretion in relinquishing jurisdiction.

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

The orders of the district court relinquishing jurisdiction and denying Lopez's I.C.R. 35 motion are affirmed.