

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46775

STATE OF IDAHO,)
) **Filed: December 19, 2019**
) **Plaintiff-Respondent,**)
) **Karel A. Lehrman, Clerk**
 v.)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
) **BRANDON JAMES WILSON,**)
) **Defendant-Appellant.**)
)

Appeal from the District Court of the First Judicial District, State of Idaho, Shoshone County. Hon. Scott Wayman, District Judge.

Appeal from order denying I.C.R. 35 motion for reduction of sentence, dismissed.

Eric D. Fredericksen, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Brandon James Wilson entered an *Alford*¹ plea to domestic battery with traumatic injury. I.C. § 18-918(2). The parties entered into a plea agreement. Pursuant to the agreement, in exchange for Wilson’s guilty plea, the state dismissed a separate case and agreed not to file a sentencing enhancement. Further, in the agreement Wilson waived his right to appeal his conviction and sentence. The district court sentenced Wilson to a unified term of five years, with a minimum period of confinement of three years. Wilson filed an I.C.R 35 motion, which the

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

district court denied. Wilson appeals, arguing that the district court erred in denying his Rule 35 motion.

We hold that Wilson's appellate challenge to the denial of his Rule 35 motion has been waived by his plea agreement. *See State v. Rodriguez*, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006). Wilson's plea agreement contained a clause by which Wilson waived his right to appeal his sentence. Arguably, that waiver did not preclude Wilson from filing a Rule 35 motion for reduction of his sentence in the trial court. However, because Wilson acknowledges he presented no new evidence or additional information in support of that Rule 35 motion, an appeal from the order denying the motion would amount to nothing more than a challenge to the reasonableness of the sentence as originally imposed. To allow an appellate challenge to the denial of the Rule 35 in these circumstances would allow Wilson and similarly-situated defendants to evade the appeal waiver in their plea agreements merely by filing an unsupported Rule 35 motion and appealing the subsequent denial order. Accordingly, we dismiss Wilson's appeal.