

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 46830/46831

STATE OF IDAHO,)
)
) **Filed: October 28, 2019**
)
) **Karel A. Lehrman, Clerk**
)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Lansing L. Haynes, District Judge.

Judgment of conviction and consecutive, unified sentences of five years, with a minimum period of confinement of two years, for battery on a law enforcement officer and intimidation of a witness, affirmed; orders denying I.C.R. 35 motions for reduction of sentences, affirmed.

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

Hon. Lawrence G. Wasden, Attorney General; Jeff Nye, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Johnny F. Philp entered *Alford*¹ pleas for battery on a law enforcement officer, Idaho Code §§ 18-915(3), 19-2514 (docket number 46830); and intimidation of a witness, I.C. § 18-2604(3) (docket number 46831). The district court sentenced Philp to consecutive, unified terms of five years with two years determinate. Philp filed an Idaho Criminal Rule 35 motion in both cases,

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

which the district court denied. Philp appeals asserting that the district court abused its discretion by imposing excessive sentences and denying his Rule 35 motions.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Philp's Rule 35 motions. 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 Philp's Rule 35 motions, we conclude no abuse of discretion has been shown.

Therefore, Philp's judgments of conviction and sentences, and the district court's orders denying Philp's Rule 35 motions, are affirmed.