

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47001/47002

STATE OF IDAHO,)
)
) **Filed: December 24, 2019**
)
) **Plaintiff-Respondent,**)
) **Karel A. Lehrman, Clerk**
)
) **v.**)
) **THIS IS AN UNPUBLISHED**
) **NICHOLAS LEE STUDER,**) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
) **Defendant-Appellant.**)
)
)

Appeal from the District Court of the Third Judicial District, State of Idaho, Gem County. Hon. George A. Southworth, District Judge.

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

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

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

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

PER CURIAM

Nicholas Lee Studer admitted to violating his probation in these two cases and the district court revoked Studer's probation and imposed his concurrent sentences of five years with three years determinate. In both cases, Studer filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Studer appeals asserting that the district court abused its discretion by denying his 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). An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.* Because no new information in support of Studer's Rule 35 motion was presented, the district court did not abuse its discretion. For the foregoing reasons, the district court's order denying Studer's Rule 35 motion is affirmed.