

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47058/47059

STATE OF IDAHO,	)
	) <b>Filed: February 6, 2020</b>
<b>Plaintiff-Respondent,</b>	)
	) <b>Karel A. Lehrman, Clerk</b>
v.	)
	) <b>THIS IS AN UNPUBLISHED</b>
CODY RYAN NELSON,	) <b>OPINION AND SHALL NOT</b>
	) <b>BE CITED AS AUTHORITY</b>
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Bruce L. Pickett, District Judge.

Order granting Idaho Criminal Rule 35 motion for reduction of sentence in Docket No. 47058, affirmed; order denying Idaho Criminal Rule 35 motion in Docket No. 47059, affirmed.

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.

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

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PER CURIAM

These cases are consolidated for appeal. In Docket No. 47058, Cody Ryan Nelson pled guilty to burglary, Idaho Code § 18-1401. The district court withheld judgment and placed Nelson on supervised probation for four years. Subsequently, Nelson admitted to violating the terms of his probation by incurring additional charges.

In Docket No. 47059, Nelson pled guilty to unlawfully killing a bull moose, I.C. § 36-1404(a)(2); unlawful possession of a firearm, I.C. § 18-3316(1); and possession of methamphetamine, I.C. § 37-2732(c)(1). In exchange for his guilty plea, additional charges were

dismissed. The district court revoked the withheld judgment in Docket No. 47058 and imposed a unified sentence of ten years with four years determinate. In Docket No. 47059, the district court imposed concurrent unified sentences of five years with two years determinate for unlawfully killing a bull moose and for unlawful possession of a firearm and seven years with two years determinate for possession of methamphetamine. Nelson filed Idaho Criminal Rule 35 motions in each case, requesting a reduction of the determinate term in Docket No. 47058 and retained jurisdiction in Docket No. 47059. The district court partially granted the Rule 35 motion in Docket No. 47058, reducing the determinate term to three years. The district court denied the request for retained jurisdiction in Docket No. 47059. Nelson appeals, contending the district court abused its discretion in declining to further reduce his sentence in Docket No. 47058 and in denying his request for retained jurisdiction in Docket No. 47059.

Initially, we note that a lower court's decision to grant or deny a Rule 35 motion will not be disturbed in the absence of an abuse of discretion. *State v. Villarreal*, 126 Idaho 277, 281, 882 P.2d 444, 448 (Ct. App. 1994). 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, 822 P.2d 1011 (Ct. App. 1991); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (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). Since the district court later modified Nelson's sentence in Docket No. 47058 pursuant to his Rule 35 motion, we will only review Nelson's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992).

Nelson has the burden of showing a clear abuse of discretion on the part of the district court in failing to further reduce the sentence on his Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Nelson has failed to show such an abuse of discretion. Accordingly, the order of the district court granting Nelson's Rule 35 motion in Docket No. 47058 is affirmed.

The primary purpose of the retained jurisdiction program is to enable the trial court to obtain additional information regarding the defendant's rehabilitative potential and suitability for probation, and probation is the ultimate objective of a defendant who is on retained jurisdiction. *State v. Chapel*, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984); *Toohill*, 103 Idaho at 567, 650 P.2d at 709. There can be no abuse of discretion in a trial court's refusal to retain

jurisdiction if the court already has sufficient information upon which to conclude that the defendant is not a suitable candidate for probation. *State v. Beebe*, 113 Idaho 977, 979, 751 P.2d 673, 675 (Ct. App. 1988); *Toohill*, 103 Idaho at 567, 650 P.2d at 709. Based upon the information that was before the district court at the time of sentencing, we hold that the district court did not abuse its discretion when it declined to retain jurisdiction in Docket No. 47059.

The orders of the district court granting Nelson's Rule 35 motion in Docket No. 47058 and denying his Rule 35 motion in Docket No. 47059 are affirmed.