

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47092

STATE OF IDAHO, )  
 )  
 ) **Filed: February 20, 2020**  
 )  
 ) **Plaintiff-Respondent,** )  
 ) **Karel A. Lehrman, Clerk**  
 )  
 ) **v.** )  
 ) **THIS IS AN UNPUBLISHED**  
 ) **BLAINE JOSEPH CUNNINGHAM,** ) **OPINION AND SHALL NOT**  
 ) **BE CITED AS AUTHORITY**  
 ) **Defendant-Appellant.** )  
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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Melissa Moody, 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; Kimberly A. Coster, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Justin R. Porter, Deputy Attorney General, Boise, for respondent.

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

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PER CURIAM

Blaine Joseph Cunningham pled guilty to possession of methamphetamine, Idaho Code § 37-2732(c). The district court imposed a unified sentence of seven years with three years determinate. The district court retained jurisdiction, and Cunningham was sent to participate in a rider program. Before he actually began the program, however, the Department of Correction removed Cunningham from the program for disciplinary reasons and recommended the district court relinquish jurisdiction. At a rider review hearing, Cunningham requested another opportunity to perform a rider or, alternatively, that the district court reduce his sentence. The district court concluded Cunningham was a danger to the community, relinquished jurisdiction,

and denied Cunningham's request for a reduced sentence. Cunningham appeals, claiming that the district court erred by relinquishing jurisdiction and declining to reduce his sentence.

The district court's refusal to retain jurisdiction is not an abuse of discretion if the court already has sufficient information to determine that a suspended sentence and probation would be inappropriate. *State v. Toolhill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. Accordingly, we hold that Cunningham has failed to show the district court abused its discretion in relinquishing jurisdiction.

Next, we review whether the district court erred in denying Cunningham's Rule 35 motion. A motion for reduction of sentence under Rule 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 Cunningham's Rule 35 motion, we conclude no abuse of discretion has been shown.

Therefore, the district court's order relinquishing jurisdiction and the order denying Cunningham's Rule 35 motion are affirmed.