

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47274

STATE OF IDAHO,)	
)	Filed: April 14, 2020
Plaintiff-Respondent,)	
)	Karel A. Lehrman, Clerk
v.)	
)	THIS IS AN UNPUBLISHED
TROY L. NICKELBY,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Defendant-Appellant.)	
_____)	

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

Order denying Idaho Criminal Rule 35 motion, affirmed.

Madsen Law Offices, P.C.; Henry D. Madsen, Coeur d’Alene, for appellant.

Hon. Lawrence G. Wasden, Attorney General; John C. McKinney, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Troy L. Nickelby pleaded guilty to rape of a victim under the age of sixteen and the perpetrator is eighteen years of age or older. I.C. § 18-6101)(1). The district court sentenced Nickelby to a unified sentence of fifteen years, with a minimum period of confinement of three years. Nickelby filed an Idaho Criminal Rule 35 motion, which the district court denied. Nickelby appeals.

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). If a trial court fails to rule upon a Rule 35 motion within a reasonable time after expiration of the 120-day period set forth in the rule, the trial court loses jurisdiction. *State v. Chapman*, 121 Idaho 351, 354, 825 P.2d 74, 77 (1992). The Idaho Supreme Court explained that this requirement that the trial court act on a Rule 35 motion within a reasonable time is necessary to prevent the court from usurping the responsibilities of parole officials. *Id.* at 355, 825 P.2d at 78.

The State argues the district court lost jurisdiction to rule on Nickelby's Rule 35 motion because it did not rule on the motion within a reasonable time and nothing in the record establishes the reason for the delay. Even if the district court retained jurisdiction to rule on Nickelby's Rule 35 motion, upon review of the record, including any new information submitted with Nickelby's Rule 35 motion, we conclude no abuse of discretion has been shown.

Therefore, the district court's order denying Nickelby's Rule 35 motion, is affirmed.