

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47345

STATE OF IDAHO,)
) **Filed: November 17, 2020**
) **Plaintiff-Respondent,**)
) **Melanie Gagnepain, Clerk**
 v.)
) **THIS IS AN UNPUBLISHED**
 SAGE LEE SILER,) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
) **Defendant-Appellant.**)
)

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Stephen S. Dunn, District Judge.

Judgment of conviction and unified sentence of twelve years, with a minimum period of confinement of five years, for aggravated battery, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Robyn A. Fyffe, Boise, for appellant.

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

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

PER CURIAM

Sage Lee Siler pled guilty to aggravated battery. Idaho Code § 18-907. The district court sentenced Siler to a unified term of twelve years with five years determinate. Siler filed an Idaho Criminal Rule 35 motion asserting that the sentence was imposed in an illegal manner based on a breach of the plea agreement by the prosecuting attorney and requested a reduction of his sentence based on leniency. Following a hearing, the district court denied the motion. Siler appeals asserting that the district court abused its discretion by imposing an excessive sentence and denying Siler’s motion to correct and reduce his sentence.

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.

Siler claims the district court erred in denying his Rule 35 motion in two ways. First, he alleges the State breached the plea agreement and, therefore, his sentence was imposed in an illegal manner. The State agreed to concur in the presentence investigation report (PSI) or recommend no more than the PSI. The PSI stated that "Mr. Siler would benefit from participation in assessed rehabilitative programs and/or pro-social activities during a period of penal incarceration to address his current attitudes/orientation and behaviors." The State recommended a sentence of fourteen years with seven years determinate. In the district court, Siler argued that the State's recommendation was grossly excessive and that the PSI could be read to recommend a period of retained jurisdiction. On appeal, Siler argues that the State breached the plea agreement because the sentencing recommendation did not include participation in rehabilitative programs. Siler's present argument was not made in the district court and is not properly before this Court. *State v. Gonzales*, 165 Idaho 667, 672, 450 P.3d 315, 320 (2019). Nevertheless, the district court correctly held that the PSI recommended a period of penal incarceration without recommending a specific unified sentence and the State's recommendation of a specific period of incarceration did not exceed the PSI or breach the plea agreement. The district court did not abuse its discretion in denying the Rule 35 motion on this ground.

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

Therefore, Siler's judgment of conviction and sentence, and the district court's order denying Siler's Rule 35 motion, are affirmed.