

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47360/47361/47362

STATE OF IDAHO,)
)
) **Filed: December 10, 2020**
)
) **Melanie Gagnepain, Clerk**
)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Judgment of conviction and unified concurrent sentence of five years, with a minimum period of confinement of two years, for aggravated assault and intimidating a witness, affirmed; order denying I.C.R. 35 motions for reduction of sentences, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Maya P. Waldron, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

In these consolidated appeals, Niko Vincent Georgette, while on probation in another matter, pled guilty to two counts of principal to a felony, burglary (Docket No. 47360). Idaho Code §§ 18-1401 and 18-204. The district court sentenced Georgette to concurrent unified sentences of seven years with two and one-half years determinate and retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Georgette's sentence and placed him on probation for a period of five years.

While on probation, Georgette pled guilty to possession of a controlled substance, marijuana (Docket No. 47361). I.C. §§ 37-2732(e) and 37-2701(t). The district court sentenced Georgette to a unified term of five years with three years determinate, suspended the sentence and placed him on probation.

Subsequently, Georgette pled guilty to aggravated assault and intimidating a witness (Docket No. 47362). I.C. §§ 18-901(b), 18-905(a), 18-2604(3). Georgette also admitted to violating his probation in Docket Nos. 47360 and 47361. The district court sentenced Georgette to a unified term of five years with two years determinate for aggravated assault, and a unified term of five years with two years determinate for intimidating a witness. These sentences were ordered to run concurrently with each other, but consecutively with those in Docket No. 47360 and Docket No. 47361.

Georgette filed Idaho Criminal Rule 35 motions in each case and the district court denied each motion. Georgette appeals asserting that the district court abused its discretion by imposing an excessive sentence in Docket No. 47362 and by denying his I.C.R. 35 motions in all three cases.

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.

Next, we review whether the district court erred in denying Georgette's Rule 35 motions.¹ 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

¹ The State contends that this Court does not have jurisdiction because Georgette did not timely file his appeal. Specifically, the State contends that, while the district court granted Georgette's motion to refile the order denying his Rule 35 motions because he did not receive a copy of the original order, Georgette did not show, pursuant to I.C.R. 49(c), that the clerk did not mail the original order. We deem the district court's granting of the motion in compliance with the applicable rules.

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 Georgette's Rule 35 motions, we conclude no abuse of discretion has been shown.

Therefore, Georgette's judgments of conviction and sentences, and the district court's orders denying Georgette's Rule 35 motions, are affirmed.