

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47452

STATE OF IDAHO,)
) Filed: June 8, 2020
Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
v.)
) THIS IS AN UNPUBLISHED
SHANE ERNEST PEREZ,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
_____)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Melissa Moody, District Judge.

Order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Sally J. Cooley, 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 BRAILSFORD, Judge

PER CURIAM

Shane Ernest Perez pled guilty to domestic violence with traumatic injury, Idaho Code §§ 18-918(2); 18-903(a). In exchange for his guilty plea, additional charges were dismissed. The district court imposed a unified sentence of ten years with one and one-half years determinate, suspended the sentence, and placed Perez on supervised probation for five years. Subsequently, Perez violated the terms of his probation. The district court revoked probation, executed the underlying sentence, and retained jurisdiction. Upon completion of retained

jurisdiction, the court again placed Perez on supervised probation for five years. Perez again violated the terms of his probation.

During the disposition hearing, Perez's counsel asked the district court "to consider some reduction whether it be up to full commutation or additional days to serve or reducing the indeterminate period" of Perez's sentence. In making this statement, Perez's counsel did not specifically reference Idaho Criminal Rule 35. Further, the district court did not specifically address the statement, but it did revoke probation and order execution of the underlying sentence. Perez then filed a Rule 35 motion for a reduction of the sentence, which the district court denied. Perez appeals that denial.

The State argues Perez's written Rule 35 motion was an impermissible, successive motion, which the district court lacked jurisdiction to consider. This Court has "consistently held that Idaho Criminal Rule 35 precludes the 'filing' of a second motion for reduction of sentence, including the circumstance where an oral motion for reduction of sentence was followed by a written motion." *State v. Hurst*, 151 Idaho 430, 439, 258 P.3d 950, 959 (Ct. App. 2011) (citations omitted). Whether the district court construed the statement of Perez's counsel as a Rule 35 motion, however, is unclear from the record. The court did not acknowledge the motion as a Rule 35 motion and neither granted nor specifically denied the request. Based on this lack of clarity in the record, we conclude Perez's written motion was not an improper, successive motion and address the merits of Perez's appeal.

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 Perez's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Perez's Rule 35 motion is affirmed.