

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47513

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| STATE OF IDAHO, |) |
| |) Filed: August 10, 2020 |
| Plaintiff-Respondent, |) |
| |) Melanie Gagnepain, Clerk |
| v. |) |
| |) THIS IS AN UNPUBLISHED |
| ALPHA LEE ROBERTS, |) OPINION AND SHALL NOT |
| |) BE CITED AS AUTHORITY |
| Defendant-Appellant. |) |
| _____ |) |

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Cynthia K.C. Meyer, District Judge.

Judgment of conviction and modified unified sentence of twenty-two years, with a minimum period of confinement of seven years, for lewd conduct with a minor under sixteen, affirmed; order partially 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; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Alpha Lee Roberts pled guilty to lewd conduct with a minor under sixteen. Idaho Code § 18-1508. The district court sentenced Roberts to a unified term of twenty-five years with ten years determinate. Roberts filed an Idaho Criminal Rule 35 motion requesting a reduction of the determinate portion of his sentence from ten years to five years, which the district court denied, in part, reducing Roberts’ sentence to a unified term of twenty-two years with seven years determinate. Roberts appeals asserting that the district court abused its discretion by imposing an excessive sentence including failing to place him on probation or retain jurisdiction. Roberts

contends the district court “apparently ignored” or “disregarded” sentences in similar cases as reported in the “Sentencing Database Information” in the Presentence Investigation Report (PSI) but considered other sentences the district court recently imposed in such cases. Notably, Roberts does not assert the district court acted unreasonably in considering those sentences but, instead, argues that the district court erred by failing to follow Idaho Rule of Evidence 201(c) in taking judicial notice of those sentences. Roberts also claims the district court abused its discretion by partially denying his requested Rule 35 relief.

As an initial matter, Roberts’ citations to the record fail to show the district court disregarded or ignored the similar sentences listed in the PSI. Rather, the record shows that the district court expressly considered the PSI which included the “Sentencing Database Information” Roberts speculates the court ignored or disregarded. As for Roberts’ assertion that the district court was required to take judicial notice before properly considering other sentences it recently imposed, we disagree. The rules governing judicial notice do not apply to sentencing hearings. I.R.E. 101(e)(3). Thus, Roberts has failed to show the district court erred by failing to apply the requirements of I.R.E. 201(c) as a condition to considering its recent sentences.

Roberts’ challenge to his sentence also fails. 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 partially denying Roberts’ Rule 35 motion. 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 Roberts' Rule 35 motion, we conclude no abuse of discretion has been shown.

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