

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47528

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, ) **Filed: September 24, 2020**  
 )  
 v. ) **Melanie Gagnepain, Clerk**  
 )  
 RAYMOND FONTNO, JR., ) **THIS IS AN UNPUBLISHED**  
 ) **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. John T. Mitchell, District Judge.

Order relinquishing jurisdiction and order partially denying Idaho Criminal Rule 35 motion, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; R. Jonathan Shirts, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

Raymond Fontno, Jr. pleaded guilty to possession of a controlled substance, heroin. I.C. § 37-2737(c)(1). The district court imposed a determinate sentence of seven years to run consecutive to a separate case. The district court retained jurisdiction, and Fontno was sent to participate in the rider program. Ultimately, the district court relinquished jurisdiction. Fontno filed an Idaho Criminal Rule 35 motion requesting the district court place him on probation, reduce his sentence, and/or run his sentence concurrent with his other sentence. The district court granted the motion in part and denied the motion in part. The district court reduced Fontno's sentence to a unified sentence of seven years, with a minimum period of incarceration

of five years, but declined to place Fontno on probation or to run his sentence concurrent with his other sentence. Fontno appeals, claiming that the district court erred by failing to place him on probation and instead relinquishing jurisdiction. He also argues the district court abused its discretion when in denied his Rule 35 motion in part and did not place him on probation.

We note that the decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that Fontno has failed to show that the district court abused its discretion in relinquishing jurisdiction.

Next, we review whether the district court erred in partially denying Fontno's Rule 35 motion. Fontno claims the district court abused its discretion by not placing him on probation pursuant to his 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 Fontno's Rule 35 motion, we conclude no abuse of discretion has been shown.

The order of the district court relinquishing jurisdiction and the district court's order partially denying Fontno's Rule 35 motion are affirmed.