

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47633/47692

STATE OF IDAHO,)
) Filed: November 4, 2020
Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
v.)
) THIS IS AN UNPUBLISHED
JOSE LUIS ZEPEDA, JR.,) 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. Jason D. Scott, District Judge.

Orders denying I.C.R. 35 motions for reduction of sentences, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Elizabeth Ann Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kacey L. Jones, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

In these consolidated appeals, Jose Luis Zepeda, Jr., pled guilty to possession of a controlled substance and solicitation of forgery. Idaho Code §§ 37-2732(c), 18-3601, 18-2001. The district court sentenced Zepeda to concurrent terms of seven years with two years determinate, as stipulated by the parties. Zepeda filed an Idaho Criminal Rule 35 motion in each case asking the district court to reduce the fixed portions of his sentences so he could travel to Illinois to donate a kidney to his ailing brother. The district court denied both motions. Zepeda appeals asserting that the district court abused its discretion by denying his Rule 35 motions.

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). An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.* Because no new information in support of Zepeda's Rule 35 motions was presented, the district court did not abuse its discretion. For the foregoing reasons, the district court's orders denying Zepeda's Rule 35 motions are affirmed.