

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 47883 & 47887

STATE OF IDAHO, )  
 )  
 ) **Filed: May 27, 2021**  
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 ) **Melanie Gagnepain, Clerk**  
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 ) **THIS IS AN UNPUBLISHED**  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, Jefferson County. Hon. Stevan H. Thompson, District Judge.

Judgments of conviction and unified sentence of twenty years, with a minimum period of confinement of three years, for battery with intent to commit a serious felony (lewd conduct) and concurrent, unified sentence of five years, with a minimum period of confinement of three years, for intimidating a witness; orders denying I.C.R. 35 motions for reduction of sentences, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jacob L. Westerfield, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kale D. Gans, Deputy Attorney General, Boise, for respondent.

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

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PER CURIAM

In these consolidated appeals, James Gordon Davis pled guilty to one count of battery with intent to commit a serious felony (lewd conduct), I.C. § 18-911, and intimidating a witness, I.C. § 18-2604(3). In exchange for his guilty pleas, additional charges were dismissed. The district court sentenced Davis to a unified term of twenty years, with a minimum period of confinement of three years, for battery with intent to commit a serious felony (lewd conduct) and a concurrent

unified term of five years, with a minimum period of confinement of three years, for intimidating a witness. Davis filed I.C.R. 35 motions, which the district court denied. Davis appeals, arguing that his sentences are excessive, that the district court should have placed him on probation, and that the district court erred in denying his Rule 35 motions for reduction of sentences.

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.

We note that the decision to place a defendant on probation 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 goal of probation is to foster the probationer's rehabilitation while protecting public safety. *State v. Gawron*, 112 Idaho 841, 843, 736 P.2d 1295, 1297 (1987); *State v. Cheatham*, 159 Idaho 856, 858, 367 P.3d 251, 253 (Ct. App. 2016). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate.

Next, we review whether the district court erred in denying Davis's Rule 35 motions. 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 Davis's Rule 35 motions, we conclude no abuse of discretion has been shown.

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