

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48005

STATE OF IDAHO, )  
 ) Filed: March 15, 2021  
 Plaintiff-Respondent, )  
 ) Melanie Gagnepain, Clerk  
 v. )  
 ) THIS IS AN UNPUBLISHED  
 KENNETH THOMAS McGUIRE, ) OPINION AND SHALL NOT  
 ) BE CITED AS AUTHORITY  
 Defendant-Appellant. )  
 )  
 \_\_\_\_\_ )

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. Barbara A. Buchanan, District Judge.

Order relinquishing jurisdiction, affirmed; denial of 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.

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

PER CURIAM

Kenneth Thomas McGuire pled guilty to possession of a controlled substance with a persistent violator enhancement. Idaho Code §§ 37-2732(c)(1), 19-2514. Following his plea, McGuire was sentenced to a unified term of five years with two years determinate with retained jurisdiction.

After McGuire completed the period of retained jurisdiction, the district court relinquished jurisdiction and ordered McGuire's sentence executed. McGuire filed an Idaho Criminal Rule 35 motion seeking reduction of the determinate portion of his sentence, which the

district court denied. McGuire appeals, claiming that the district court abused its discretion by refusing to grant probation and denying his I.C.R. 35 motion.

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 McGuire has failed to show that the district court abused its discretion in relinquishing jurisdiction.

McGuire also contends that the district court abused its discretion by denying his I.C.R. 35 motion when it relinquished jurisdiction. Pursuant to Rule 35, a court may reduce a sentence within 120 days after the court releases retained jurisdiction. A court's decision not to reduce a sentence is reviewed for an abuse of discretion. In conducting our review, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984). Our appellate standard of review and the factors to be considered when evaluating the reasonableness of a sentence are well-established. *State v. Burdett*, 134 Idaho 271, 1 P.3d 299 (Ct. App. 2000); *State v. Sanchez*, 115 Idaho 776, 769 P.2d 1148 (Ct. App. 1989); *State v. Reinke*, 103 Idaho 771, 653 P.2d 1183 (Ct. App. 1982); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). Applying those standards, McGuire has failed to show an abuse of discretion.

The order of the district court relinquishing jurisdiction and denying McGuire's I.C.R. 35 motion are affirmed.