

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48242

STATE OF IDAHO,)
) Filed: August 3, 2021
Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
v.)
) THIS IS AN UNPUBLISHED
JAYSON BARY BURNS,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
_____)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Joel E. Tingey, District Judge.

Judgment of conviction and concurrent unified sentences of seven years, with a minimum period of confinement of two and one-half years, for possession of heroin and possession of methamphetamine and five years with two and one-half years determinate for felony eluding, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

Jayson Bary Burns pled guilty to possession of heroin, possession of methamphetamine, and felony eluding. Idaho Code §§ 37-2732(c)(1), 49-1404. The district court sentenced Burns to concurrent unified sentences of seven years with two and one-half years determinate for possession of heroin and possession of methamphetamine and five years with two and one-half years determinate for felony eluding. Burns filed an Idaho Criminal Rule 35 motion, which the district

court denied. Burns appeals asserting that the district court abused its discretion by imposing excessive sentences and that the district court erred by denying his Rule 35 motion.

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 denying Burns' 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 Burns' Rule 35 motion, we conclude no abuse of discretion has been shown.

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