

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 48535/48764

STATE OF IDAHO,)
)
) **Filed: November 19, 2021**
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) **Melanie Gagnepain, Clerk**
)
) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Jason D. Scott, District Judge.

Judgment of conviction and unified sentence of ten years, with a minimum period of confinement of five years, for felony domestic battery, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Emily M. Joyce, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Neil Terry Bunker pled guilty to felony domestic battery, Idaho Code §§ 18-918(2), 18-903(a). In exchange for his guilty plea, additional charges were dismissed. The district court imposed a unified term of ten years with five years determinate to run consecutively to a sentence in a Canyon County case. Bunker filed an Idaho Criminal Rule 35 motion for reduction of sentence requesting that the district court reduce his sentence to a unified term of ten years with three years determinate to run concurrently with the sentence in the Canyon County case. The district court denied Bunker’s motion. Bunker appeals asserting that the district court abused its discretion by

imposing an excessive sentence and by denying his Rule 35 motion without allowing additional time to submit evidence in support of the 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). Our role is limited to determining whether reasonable minds could reach the same conclusion as the district court. *State v. Biggs*, 168 Idaho 112, 116, 480 P.3d 150, 154 (Ct. App. 2020). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Bunker argues that the district court abused its discretion by denying his Rule 35 motion without allowing him time to submit additional evidence. Bunker filed his Rule 35 motion one day prior to the expiration of the 120-day time limit set forth in Rule 35. Bunker submitted no evidence in support of the motion. 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). However, Bunker requested an unspecified additional time to submit two letters from friends that he claimed he had not yet received. The district court denied the motion stating: "Without an explanation for why supporting documents or evidence couldn't have been provided within that 120-day period, coupling an eleventh-hour Rule 35(b) motion with a request to supplement at a later date amounts to an attempted circumvention of the time limit."

Rule 35 expressly provides the trial court discretion to act on a motion for reduction of sentence "without additional testimony and without oral argument." I.C.R. 35(b). That discretion may be abused if the trial court unreasonably refuses to consider relevant evidence or otherwise unduly limits the information considered. *State v. Bayles*, 131 Idaho 624, 626, 962 P.2d 395, 397 (Ct. App. 1998). When a defendant filing a Rule 35 motion wishes to submit additional evidence, he "should make an 'offer of proof' *in the motion itself or by and accompanying affidavit* to enable the district judge to make a reasoned decision on whether to hold an evidentiary hearing and to create a record upon which appellate review may be based." *Id.* at 626-27, 962 P.2d at 397-98.

Here, Bunker failed to provide an offer of proof in the motion or by affidavit and failed to provide the district court with any reason for the delay, when the letters were expected to be received, or how they were expected to support his motion for reduction of sentence. The district court did not abuse its discretion in denying the request for additional time or denying the Rule 35 motion.

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