

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48908

STATE OF IDAHO,)
) **Filed: June 21, 2022**
) **Plaintiff-Respondent,**)
) **Melanie Gagnepain, Clerk**
v.)
) **THIS IS AN UNPUBLISHED**
) **CLIFFORD GERANIMO BOROWIAK,**) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
) **Defendant-Appellant.**)
)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Richard S. Christensen, District Judge.

Order relinquishing jurisdiction, affirmed; order denying Idaho Criminal Rule 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; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Clifford Geranimo Borowiak pled guilty to aggravated assault, Idaho Code §§ 18-901, 18-905. The district court imposed a unified sentence of four years with three years determinate, suspended the sentence, and placed Borowiak on probation. Subsequently, Borowiak violated the terms of his probation. The district court revoked probation and retained jurisdiction, and Borowiak was sent to participate in the rider program. After Borowiak completed his rider, the district court relinquished jurisdiction and modified his sentence by reducing the determinate term by six months, resulting in a unified sentence of four years with two and one-half years determinate. Borowiak filed an Idaho Criminal Rule 35 motion, which the district court denied.

Borowiak appeals, claiming that the district court erred by refusing to grant probation and by denying his Rule 35 motion for reduction of sentence.

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

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

The orders of the district court relinquishing jurisdiction and denying Borowiak's Rule 35 motion are affirmed.