

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 49367

STATE OF IDAHO,)
)
) **Filed: July 12, 2022**
)
) **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) **THIS IS AN UNPUBLISHED**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. Patrick J. Miller, District Judge.

Order denying I.C.R. 35 motion, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

Ronald Louis Kelly pled guilty to failure to register as a sex offender. Idaho Code §§ 18-8307, 18-8311, 18-8307(4)(a). The district court sentenced Kelly to a unified term of four years with two years determinate, and placed Kelly on probation for a period of four years. Within a few months the district court found that Kelly had violated the terms of probation and revoked Kelly's probation and retained jurisdiction. Following the period of retained jurisdiction, the district court placed Kelly back on probation for a period of four years. Several months later, Kelly admitted to violating the terms of his probation. The district court revoked his probation and executed the underlying sentence. Kelly filed an Idaho Criminal Rule 35 motion for

leniency. The district court ordered that Kelly had thirty days to provide information or evidence in support of his request for leniency. Kelly did not submit any information to the district court, and the district court denied the motion. Kelly appeals asserting the district court abused its discretion by denying his I.C.R. 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). An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information. *Id.* Because no new information in support of Kelly's Rule 35 motion was presented, the district court did not abuse its discretion. For the foregoing reasons, the district court's order denying Kelly's Rule 35 motion is affirmed.