

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 50076

STATE OF IDAHO,)
) Filed: August 17, 2023
 Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
 v.)
) THIS IS AN UNPUBLISHED
 MICHAEL LEWIS WAGNER,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
 Defendant-Appellant.)
)
)

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia County. Hon. Michael P. Tribe, District Judge.

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. Raúl R. Labrador, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Michael Lewis Wagner pled guilty to felony driving under the influence. I.C. § 18-8005(9). The district court sentenced Wagner to a unified term of eight years, with a minimum period of confinement of six years, to run consecutively to an unrelated sentence. Wagner filed an I.C.R. 35 motion, which the district court denied. Wagner appeals, arguing that the district court erred in denying his 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). 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 Wagner's Rule 35 motion was presented, the district court did not abuse its discretion.

For the foregoing reasons, the district court's order denying Wagner's Rule 35 motion is affirmed.