IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 51720

STATE OF IDAHO,)
) Filed: February 24, 2025
Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
v.)
) THIS IS AN UNPUBLISHED
FRANK J. GIUDICE,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
)

Appeal from the District Court of the Second Judicial District, State of Idaho, Idaho County. Hon. Adam H. Green, District Judge.

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

Erik R. Lehtinen, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Kacey L. Jones, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Frank J. Giudice pled guilty to felony DUI, Idaho Code §§ 18-8004 and 18-8005(6). In exchange for his guilty plea, the State dismissed other charges. The district court sentenced Giudice to a term of eight years with three years determinate, suspended the sentence, and placed him on probation for five years. Giudice admitted to violating his probation, and the district court consequently revoked his probation, ordered execution of the previously suspended sentence, and retained jurisdiction. The district court relinquished jurisdiction following Giudice's voluntary relinquishment of retained jurisdiction. Giudice filed an Idaho Criminal Rule 35 motion, requesting a reduction in his sentence, which the district court denied. Mindful that he did not

provide any new or additional information, Giudice appeals, asserting that the district court abused its discretion by denying his 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). 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 Giudice's Rule 35 motion was presented, the district court did not abuse its discretion. For the foregoing reasons, the district court's order denying Giudice's Rule 35 motion is affirmed.