

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 40169

STATE OF IDAHO,	)	2013 Unpublished Opinion No. 626
	)	
Plaintiff-Respondent,	)	Filed: August 14, 2013
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
TAYLOR MARTIN NICHOLS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Dane H. Watkins, Jr., District Judge.

Judgment of conviction and unified sentence of five years, with a minimum period of confinement of one year and nine months, for burglary, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Stephen D. Thompson, Ketchum, for appellant.

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

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Before GUTIERREZ, Chief Judge; LANSING, Judge;  
and GRATTON, Judge

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PER CURIAM

Taylor Martin Nichols was convicted of burglary, Idaho Code § 18-1401. The district court sentenced Nichols to a unified term of five years with two years determinate, to run concurrently with a sentence in a separate case. Nichols filed an Idaho Criminal Rule 35 motion, which the district court granted by reducing the determinate term to one year and nine months. Nichols appeals, contending that his sentence is excessive and that the district court abused its discretion in failing to further reduce his sentence pursuant to his I.C.R. 35 motion.

Initially, we note that a lower court's decision to grant or deny a Rule 35 motion will not be disturbed in the absence of an abuse of discretion. *State v. Villarreal*, 126 Idaho 277, 281,

882 P.2d 444, 448 (Ct. App. 1994). 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, 822 P.2d 1011 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 680 P.2d 869 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). Since the district court later modified Nichols' sentence, pursuant to his Rule 35 motion, we will only review Nichols' modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992).

Nichols has the burden of showing a clear abuse of discretion on the part of the district court in failing to further reduce the sentence on Nichols' Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Nichols has failed to show such an abuse of discretion. Accordingly, the order of the district court granting Nichols' Rule 35 motion is affirmed.