

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 40754

STATE OF IDAHO,)	2013 Unpublished Opinion No. 720
)	
Plaintiff-Respondent,)	Filed: October 22, 2013
)	
v.)	Stephen W. Kenyon, Clerk
)	
MARK RODRIGUEZ, a.k.a. MARK)	THIS IS AN UNPUBLISHED
ANTHONY RODRIGUEZ, MARK)	OPINION AND SHALL NOT
ANTHENY RODRIGUEZ,)	BE CITED AS AUTHORITY
)	
Defendant-Appellant.)	
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Molly J. Huskey, District Judge.

Judgment of conviction and unified sentence of nine years, with a minimum period of confinement of four years, for felony driving under the influence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

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

Before LANSING, Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

In this case we are asked to determine whether the district court abused its discretion in refusing to grant probation following a period of retained jurisdiction. We are also asked to review a sentence of a unified term of nine years, with a minimum period of confinement of four years, for felony driving under the influence (DUI). We affirm.

Mark Rodriguez, a.k.a. Mark Anthony Rodriguez and Mark Antheny Rodriguez, pled guilty to one count of felony DUI. I.C. §§ 18-8004 and 18-8005. In exchange for his guilty plea, two additional charges were dismissed. Following his plea, Rodriguez was sentenced to a

unified term of nine years, with a minimum period of confinement of four years. The district court retained jurisdiction, and Rodriguez was sent to participate in the rider program.

After Rodriguez completed his rider evaluation, the district court relinquished jurisdiction. Rodriguez appeals, claiming that the district court erred by refusing to grant probation in light of the recommendation of the rider program staff. He also argues that his sentence is excessive and constitutes an abuse of discretion and that the district court should have sua sponte reduced the sentence upon relinquishment of jurisdiction.

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

Rodriguez also contends that the district court abused its discretion by not reducing his sentence, sua sponte, pursuant to I.C.R. 35 when it relinquished jurisdiction. Pursuant to Rule 35, a court may reduce a sentence within 120 days after the court releases retained jurisdiction. A court's decision not to reduce a sentence is reviewed for an abuse of discretion. In conducting our review, we consider the entire record and apply the same reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984). Our appellate standard of review and the factors to be considered when evaluating the reasonableness of a sentence are well-established. *State v. Burdett*, 134 Idaho 271, 1 P.3d 299 (Ct. App. 2000); *State v. Sanchez*, 115 Idaho 776, 769 P.2d 1148 (Ct. App. 1989); *State v. Reinke*, 103 Idaho 771, 653 P.2d 1183 (Ct. App. 1982); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). Applying those standards, Rodriguez has failed to show an abuse of discretion.

The order of the district court relinquishing jurisdiction and Rodriguez's sentence are affirmed.