

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 40757

STATE OF IDAHO,)	2013 Unpublished Opinion No. 730
)	
Plaintiff-Respondent,)	Filed: October 29, 2013
)	
v.)	Stephen W. Kenyon, Clerk
)	
ROBERT W. GARRITY,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Melissa Moody, District Judge.

Order relinquishing jurisdiction, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Shawn F. Wilkerson, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

Robert W. Garrity pled guilty to first degree stalking. I.C. § 18-7905. The district court withheld judgment and placed Garrity on probation. Garrity later admitted to violating the terms of his probation. The district court revoked probation; imposed unified sentence of five years, with a minimum period of confinement of three years; but retained jurisdiction.

After Garrity completed evaluation on his rider, the Department of Correction recommended probation. The district court, however, relinquished jurisdiction. Garrity appeals, claiming that the district court erred by refusing to grant probation in light of the recommendation of the Department. Garrity requested I.C.R 35 reduction of his sentence, which the district court denied. Garrity appeals.

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 Garrity has failed to show that the district court abused its discretion, and we therefore affirm the order relinquishing jurisdiction.

Garrity also contends that the unified sentence of five years, with a minimum period of confinement of three years, is excessive and constitutes an abuse of discretion. Sentences are reviewed for an abuse of discretion. 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). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Garrity argues that all of the relevant goals of sentencing could have been accomplished with probation. As noted above, however, the district court found that probation was not an appropriate course of action in Garrity's case. The record does not indicate that the district court abused its discretion.

Next, we review whether the district court erred in denying Garrity's 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). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987). Upon review of the record, we conclude no abuse of discretion has

been shown. Therefore, Garrity's judgment of conviction and sentence, and the district court's order denying Garrity's Rule 35 motion, are affirmed.