

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41035

STATE OF IDAHO,	)	2014 Unpublished Opinion No. 333
	)	
Plaintiff-Respondent,	)	Filed: January 23, 2014
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
DARRELL E. PENN,	)	<b>THIS IS AN UNPUBLISHED</b>
	)	<b>OPINION AND SHALL NOT</b>
Defendant-Appellant.	)	<b>BE CITED AS AUTHORITY</b>
	)	

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Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Stephen S. Dunn, District Judge.

Order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, 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; GRATTON, Judge;  
and MELANSON, Judge

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PER CURIAM

Darrell E. Penn pled guilty to felony driving under the influence of alcohol and/or drugs. Idaho Code §§ 18-8004, 18-8005(5). The district court sentenced Penn to a unified term of ten years, with five years determinate. Penn filed an Idaho Criminal Rule 35 motion, which the district court denied. Penn appeals.

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 or additional information in support of Penn's Rule 35 motion was presented, the district court did not abuse its discretion. For the foregoing reasons, the district court's order denying Penn's Rule 35 motion is affirmed.