

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 41838

STATE OF IDAHO,)	2014 Unpublished Opinion No. 651
)	
Plaintiff-Respondent,)	Filed: August 7, 2014
)	
v.)	Stephen W. Kenyon, Clerk
)	
STANLEY EVAN RICHARDSON, JR.,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. Barbara A. Buchanan, District Judge.

Order denying successive I.C.R. 35 motion for reduction of sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Sally J. Cooley, 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; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

Stanley Evan Richardson, Jr. pled guilty to burglary. Idaho Code § 18-1401. The district court sentenced Richardson to unified sentence of four years with two years determinate, but retained jurisdiction. Following the period of retained jurisdiction, the district court placed Richardson on probation for a period of three years. Subsequently Richardson admitted to violating his probation and orally asked the district court for a reduction in his sentence pursuant to Idaho Criminal Rule 35 to three years determinate. The district granted his oral motion and reduced the sentence to a unified term of three years with two years determinate. Richardson then filed a successive Rule 35 motion, asking the district court to further reduce his sentence, which the district court denied. Mindful that Rule 35 prohibits successive motions for a

reduction of sentence, Richardson nevertheless asserts that the district court abused its discretion by denying his second Rule 35 motion because he did not understand the length of his sentence.

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). Here, the district court modified Richardson's sentence pursuant to his Rule 35 motion, and we will only review a modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992). Even assuming the district court had jurisdiction to entertain his filed motion, Richardson 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 Richardson's Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Richardson has failed to show such an abuse of discretion. Accordingly, the order of the district court denying Richardson's successive Rule 35 motion is affirmed.