

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 42187 & 42188

STATE OF IDAHO, ) 2015 Unpublished Opinion No. 386  
)  
Plaintiff-Respondent, ) Filed: March 3, 2015  
)  
v. ) Stephen W. Kenyon, Clerk  
)  
KRISTINE MARIE ROTHERMEL, a/k/a ) THIS IS AN UNPUBLISHED  
CLAIBORNE, ) OPINION AND SHALL NOT  
) BE CITED AS AUTHORITY  
Defendant-Appellant. )  
)  
\_\_\_\_\_ )

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Jason D. Scott, District Judge.

Order granting I.C.R. 35 motion for reduction of sentence, affirmed; judgment of conviction and unified sentence of seven years, with a minimum period of confinement of one and one-half years, for possession of a controlled substance, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

\_\_\_\_\_  
Before LANSING, Judge; GUTIERREZ, Judge;  
and GRATTON, Judge  
\_\_\_\_\_

PER CURIAM

In Docket No. 42187, Kristine Marie Rothermel, a/k/a Claiborne, pled guilty to possession of a controlled substance. I.C. § 37-2732(c). In exchange for her guilty plea, an additional charge was dismissed. The district court sentenced Rothermel to a unified term of

seven years, with a minimum period of confinement of two years. However, the district court suspended the sentence and placed Rothermel on probation.

In Docket No. 42188, Rothermel entered an *Alford*<sup>1</sup> plea to possession of a controlled substance. I.C. § 37-2732(c). In exchange for her guilty plea, additional charges were dismissed. The district court sentenced Rothermel to a unified term of seven years, with a minimum period of confinement of one and one-half years, to run concurrent with her sentence in Docket No. 42187. Rothermel filed an I.C.R. 35 motion for reduction of her sentence, which the district court denied.

Based on Rothermel's guilty plea in Docket No. 42188, the district court revoked Rothermel's probation in Docket No. 42187 and ordered execution of her original sentence. Rothermel filed a Rule 35 motion for reduction of sentence, which the district court granted and reduced Rothermel's sentence by 281 days.

Rothermel appeals, asserting that the district court should have further reduced her sentence in granting the Rule 35 motion in Docket No. 42187. Rothermel also asserts that her sentence in Docket No. 42188 is excessive and that the district court erred in denying her Rule 35 motion.

Regarding Rothermel's Rule 35 motion in Docket No. 42187, 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 Rothermel's sentence, pursuant to her Rule 35 motion, we will only review Rothermel's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992). Rothermel 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 Rothermel's Rule 35 motion. *See State*

---

<sup>1</sup> *See North Carolina v. Alford*, 400 U.S. 25 (1970).

*v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Rothermel has failed to show such an abuse of discretion.

Rothermel's asserts her sentence in Docket No. 42188 is excessive. Sentencing is a matter for the trial court's discretion. 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, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (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). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Rothermel's Rule 35 motion in Docket No. 42188. 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); *Lopez*, 106 Idaho at 449-51, 680 P.2d at 871-73. Upon review of the record, we conclude no abuse of discretion has been shown.

Therefore, the order of the district court granting Rothermel's Rule 35 motion in Docket No. 42187 is affirmed. Furthermore, Rothermel's judgment of conviction and sentence, and the district court's order denying Rothermel's Rule 35 motion, in Docket No. 42188 are affirmed.