

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42252

STATE OF IDAHO, ) 2015 Unpublished Opinion No. 331  
 )  
Plaintiff-Respondent, ) Filed: January 30, 2015  
 )  
v. ) Stephen W. Kenyon, Clerk  
 )  
ZACHARY McKELVIE, ) THIS IS AN UNPUBLISHED  
 ) OPINION AND SHALL NOT  
Defendant-Appellant. ) BE CITED AS AUTHORITY  
 )

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Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Dane H. Watkins, Jr., District Judge.

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

Sara B. Thomas, State Appellate Public Defender; Maya P. Waldron, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Russell J. Spencer, Deputy Attorney General, Boise, for respondent.

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

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PER CURIAM

Zachary McKelvie pled guilty to sexual exploitation of a child by producing sexually exploitative material, Idaho Code § 18-1507(2)(b)(4). The district court sentenced McKelvie to a unified ten-year sentence with a one and one-half year determinate term. McKelvie filed an Idaho Criminal Rule 35 motion, which the district court denied. McKelvie appeals.

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 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, including any new information submitted with McKelvie's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying McKelvie's Rule 35 motion is affirmed.