

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 43068

STATE OF IDAHO,) 2015 Unpublished Opinion No. 763
)
Plaintiff-Respondent,) Filed: December 23, 2015
)
v.) Stephen W. Kenyon, Clerk
)
JESSICA JOY BROWN,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Fremont County. Hon. Gregory W. Moeller, District Judge.

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

Sara B. Thomas, State Appellate Public Defender; Jenny C. Swinford, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

Jessica Joy Brown entered an *Alford*¹ plea to aiding and abetting attempted first degree murder. I.C. § 18-4001. In exchange for her guilty plea, an additional charge was dismissed. The district court sentenced Brown to a unified term of fifteen years, with a minimum period of confinement of twelve and one-half years. Brown filed an I.C.R 35 motion, which the district court granted by reducing Brown's sentence to a unified term of fifteen years, with a minimum period of confinement of ten years. Brown appeals.

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

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). Since the district court later modified Brown's sentence, pursuant to her Rule 35 motion, we will only review Brown's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992).

Brown 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 Brown's Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Brown has failed to show such an abuse of discretion. Accordingly, the order of the district court granting Brown's Rule 35 motion is affirmed.