

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 40755

STATE OF IDAHO,	)	2014 Unpublished Opinion No. 547
	)	
<b>Plaintiff-Respondent,</b>	)	<b>Filed: June 4, 2014</b>
	)	
v.	)	<b>Stephen W. Kenyon, Clerk</b>
	)	
TIMOTHY LYNN FRIEL,	)	<b>THIS IS AN UNPUBLISHED</b>
	)	<b>OPINION AND SHALL NOT</b>
<b>Defendant-Appellant.</b>	)	<b>BE CITED AS AUTHORITY</b>
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Timothy L. Hansen, District Judge.

Order relinquishing jurisdiction, affirmed.

Sara B. Thomas, State Appellate Public Defender; Shawn F. Wilkerson, Deputy Appellate Public Defender, Boise, for appellant.

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

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

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PER CURIAM

In this case we are asked to determine whether the district court abused its discretion in refusing to grant probation following a period of retained jurisdiction. We are also asked to review a unified sentence of eight years with two years determinate for rape. We affirm.

Timothy Lynn Friel pled guilty to rape. Idaho Code § 18-6101(1). Following his plea, the district court sentenced Friel to a unified term of eight years with two years determinate, and the district court retained jurisdiction. Following the period of retained jurisdiction, the district court suspended Friel’s sentence and placed him on supervised probation for eight years. Subsequently, Friel admitted to violating the conditions of his probation and the district court reinstated his supervised probation, extending the term for a period of five years from the date of reinstatement. Thereafter, Friel again violated his probation. The district court revoked his

probation, ordered the underlying sentence executed, and retained jurisdiction. Following Friel's second period of retained jurisdiction, the district court relinquished jurisdiction. Friel filed an Idaho Criminal Rule 35 motion which the district court denied.

Friel appeals, asserting that the district court abused its discretion by relinquishing jurisdiction. He also argues that district court should have sua sponte reduced the sentence upon relinquishment of jurisdiction.

We note that the decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that Friel has failed to show that the district court abused its discretion in relinquishing jurisdiction.

Friel also contends that the district court abused its discretion by not reducing his sentence, sua sponte, pursuant to I.C.R. 35 when it relinquished jurisdiction. Pursuant to Rule 35, a court may reduce a sentence within 120 days after the court releases retained jurisdiction. A court's decision not to reduce a sentence is reviewed for an abuse of discretion. In conducting our review, we consider the entire record and apply the same reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984). Our appellate standard of review and the factors to be considered when evaluating the reasonableness of a sentence are well-established. *State v. Burdett*, 134 Idaho 271, 1 P.3d 299 (Ct. App. 2000); *State v. Sanchez*, 115 Idaho 776, 769 P.2d 1148 (Ct. App. 1989); *State v. Reinke*, 103 Idaho 771, 653 P.2d 1183 (Ct. App. 1982); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). Applying those standards, and assuming Friel can appeal the court's failure to sua sponte reduce his sentence, Friel has failed to show an abuse of discretion.

The order of the district court relinquishing jurisdiction and Friel's sentence are affirmed.