

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 44687

STATE OF IDAHO,) 2017 Unpublished Opinion No. 465
)
Plaintiff-Respondent,) Filed: May 19, 2017
)
v.) Stephen W. Kenyon, Clerk
)
BENJAMIN ZIMBALIST PITTMAN,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Steven J. Hippler, District Judge.

Order relinquishing jurisdiction, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Kimberly A. Coster, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Benjamin Zimbalist Pittman pled guilty to felony domestic battery. I.C. §§ 18-912(2) and 18-903(a). The district court sentenced Pittman to a unified term of seven years, with a minimum period of confinement of two years. The district court retained jurisdiction, and Pittman was sent to participate in the rider program.

After Pittman completed his rider, the district court relinquished jurisdiction. Pittman filed an I.C.R 35 motion, which the district court denied. Pittman appeals, claiming that the

district court erred by refusing to grant probation. He also argues his sentence is excessive and constitutes an abuse of discretion and that the district erred in denying Pittman's Rule 35 motion.

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 Pittman has failed to show that the district court abused its discretion in relinquishing jurisdiction.

Pittman also contends that his sentence is excessive and constitutes an abuse of discretion. Sentences are reviewed for an abuse of discretion. 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). 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).

Pittman argues that all of the relevant goals of sentencing could have been accomplished with probation. As noted above, however, the district court found that probation was not an appropriate course of action in Pittman's case. The record does not indicate that the district court abused its discretion in sentencing.

Pittman further asserts that the district court erred in denying Pittman's Rule 35 motion for reduction of sentence. 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). The record does not indicate that the district court abused its discretion in denying Pittman's motion.

The order of the district court relinquishing jurisdiction, Pittman's sentence, and the order denying his Rule 35 motion are affirmed.