

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 45353

STATE OF IDAHO,) 2018 Unpublished Opinion No. 453
)
Plaintiff-Respondent,) Filed: May 15, 2018
)
v.) Karel A. Lehrman, Clerk
)
RICHARD PHILLIP VAUGHAN,) THIS IS AN UNPUBLISHED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. Lynn G. Norton, District Judge.

Order revoking probation and order denying Idaho Criminal Rule 35 motion, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

Richard Phillip Vaughan pleaded guilty to two counts of delivery of a controlled substance, Idaho Code § 37-2732(a). The district court imposed concurrent, unified five-year sentences, with two years determinate. The district court retained jurisdiction, but after a period of retained jurisdiction, suspended the sentences and placed Vaughan on probation. Subsequently, Vaughan admitted to violating the terms of the probation, and the district court executed the underlying sentences, and again retained jurisdiction. After Vaughan completed his rider, the district court relinquished jurisdiction. Vaughan filed an Idaho Criminal Rule 35 motion, which the district court denied. Vaughan appeals, claiming that the district court erred

by refusing to grant probation. He also argues the district court abused its discretion when it denied his I.C.R. 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 Vaughan has failed to show that the district court abused its discretion in relinquishing jurisdiction.

Next, 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 an I.C.R. 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). Upon review of the record, including any new information submitted with Vaughan's I.C.R. 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Vaughan's I.C.R. 35 motion is affirmed.

The order of the district court relinquishing jurisdiction and order denying Vaughan's I.C.R. 35 motion are affirmed.