

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36633

STATE OF IDAHO,)	2011 Unpublished Opinion No. 561
)	
Plaintiff-Respondent,)	Filed: July 27, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
GRAHAM TYLER BURRAGE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John P. Luster, District Judge.

Judgment of conviction and unified term of life imprisonment, with a minimum period of confinement of fifteen years for forcible sexual penetration by use of a foreign object; a unified term of fifteen years, with a minimum period of confinement of five years, for attempted strangulation; a unified term of twenty years, with a minimum period of confinement of fifteen years, for battery with intent to commit rape; and a determinate term of five years for burglary, affirmed; order denying I.C.R. 35 motion for reduction of sentences, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

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

Before LANSING, Judge; GUTIERREZ, Judge;
and MELANSON, Judge

PER CURIAM

Graham Tyler Burrage was found guilty of forcible sexual penetration by use of a foreign object, I.C. § 18-6608; attempted strangulation, I.C. § 18-923; battery with intent to commit rape, I.C. §§ 18-903, 18-911; and burglary, I.C. § 18-1401. The district court sentenced Burrage to unified term of life imprisonment, with a minimum period of confinement of fifteen years for forcible sexual penetration by use of a foreign object; a unified term of fifteen years, with a minimum period of confinement of five years, for attempted strangulation; a unified term of

twenty years, with a minimum period of confinement of fifteen years, for battery with intent to commit rape; and a determinate term of five years for burglary. The district court ordered Burrage's sentences to run concurrent. Burrage filed an I.C.R 35 motion, which the district court denied. Burrage appeals.

Sentencing is a matter for the trial court's discretion. 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, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (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). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Burrage's Rule 35 motion. 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); *Lopez*, 106 Idaho at 449-51, 680 P.2d at 871-73. Upon review of the record, we conclude no abuse of discretion has been shown.

Therefore, Burrage's judgment of conviction and sentences, and the district court's order denying Burrage's Rule 35 motion, are affirmed.