

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37724

STATE OF IDAHO,)	2011 Unpublished Opinion No. 515
)	
Plaintiff-Respondent,)	Filed: June 13, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
COREY ADAM CURTIS,)	THIS IS AN UNPUBLISHED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. Ronald J. Wilper, District Judge.

Judgment of conviction and sentence for rape, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jordan E. Taylor, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Russell J. Spencer, Deputy Attorney General, Boise, for respondent.

GUTIERREZ, Judge

Corey Adam Curtis appeals from the district court’s judgment of conviction sentencing him to a unified term of fifteen years of confinement with two years determinate. Curtis also appeals the district court’s order denying his motion for reconsideration of sentence. For the reasons set forth below we affirm.

I.

FACTS AND PROCEDURE

On March 2, 2010, Corey Adam Curtis pled guilty to rape as defined by I.C. § 18-6101(1). The district court subsequently entered a judgment of conviction on April 14, 2010, and sentenced Curtis to fifteen years in state prison with two years fixed and thirteen years indeterminate. Thereafter, Curtis filed a Rule 35 motion to reconsider sentence and for leave to provide supporting materials. On May 21, 2010, the district court filed a notice of intent to rule

on the motion which informed Curtis that the court intended “to rule on the motion, with or without supporting material, at any time on or about 8/13/10.” Curtis filed an addendum in support of his motion on July 19, 2010, and the district court subsequently denied the motion on August 11, 2010. The day after the court’s decision, Curtis filed a second addendum in support of his motion but, since the court had already reached its decision, this addendum was not initially considered.¹ Curtis now appeals.

II. ANALYSIS

Curtis first contends that the sentence imposed by the district court is unreasonable and constitutes an abuse of discretion. An appellate review of a sentence is based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary “to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case.” *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Where an appellant contends that the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (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). We have examined the record and in light of the relevant factors we find no abuse of discretion by the district court.

We next address Curtis’s argument that the district court violated his right to due process in regard to his Rule 35 motion. The Fourteenth Amendment of the United States Constitution

¹ Curtis filed a motion to reconsider the denial of his Rule 35 motion on August 16, 2010, and supported it with his second addendum from August 12, 2010. The court denied Curtis’s additional motion on August 19, 2010, and expressly stated that Curtis’s second addendum did not alter its previous decision.

requires that no state shall deprive a person of life, liberty, or property without due process of law. U.S. Const. amend XIV § 1. Valid due process challenges must demonstrate two things. First, that there was a deprivation of a protected due process interest. *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999). Second, that the protected interest was removed with inadequate procedures. *Mathews v. Eldridge*, 424 U.S. 319, 333-35 (1976). Assuming Curtis satisfied the first requirement, he argues that the district court used inadequate procedures because the court failed to provide him with adequate notice and an opportunity to be heard.

The United States Supreme Court has stated that notice and an opportunity to be heard are fundamental to procedural due process. *Fuentes v. Shevin* 407 U.S. 67, 80 (1972). Curtis argues that the district court failed to provide him with adequate notice because the court's notice of intent stated that it would rule on the motion on August 13, 2010. He also contends that the court denied him of his opportunity to be heard because the court's ruling on August 11, 2010, barred him from supporting his motion with a second addendum on August 12, 2010. Both of these arguments depend upon the premise that the district court's notice of intent set a firm deadline of August 13, 2010. In determining the validity of this premise, we must examine the language of the court's notice of intent. The relevant portion reads:

[T]he defendant is hereby notified that the court intends to rule on the motion, with or without supporting material, at any time on or about 8/13/10. This is because the court has jurisdiction to rule on such motions only for a "reasonable" time after 120 days from the date the sentence was imposed.

This excerpt provides a general time frame rather than a firm deadline of August 13, 2010, for the court to rule on the motion and for Curtis to submit supporting materials. The court's use of the phrase "with or without supporting material, at any time, on or around 8/13/10" indicates that it could rule on Curtis's motion at *any* time around August 13, 2010.² Therefore, Curtis received adequate notice that the court could rule on the motion at some time before August 13, 2010. Curtis also received his opportunity to be heard because the court indicated

² This interpretation also invalidates Curtis's argument that the court's notice of intent is a misleading statement that caused him to believe he had until August 13, 2010, to file supporting materials. The absence of a misleading statement distinguishes his case from *State v. Corder*, 115 Idaho 1137, 772 P.2d 1231 (Ct. App. 1989).

that it would accept and consider supporting materials up until the date that it gave its ruling. Therefore, the court's ruling on August 11, 2010, did not violate Curtis's right to due process.

III.

CONCLUSION

We conclude that the district court did not abuse its discretion when it imposed sentence and that the court did not violate Curtis's right to due process when it ruled on his motion on August 11, 2010. For these reasons Curtis's judgment of conviction and sentence as well as the order denying Curtis's Rule 35 motion are affirmed.

Judge LANSING and Judge MELANSON **CONCUR.**