

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37942

STATE OF IDAHO,)	2012 Unpublished Opinion No. 322
)	
Plaintiff-Respondent,)	Filed: January 18, 2012
)	
v.)	Stephen W. Kenyon, Clerk
)	
ROY ELIZE FERGUSON, III,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Stephen S. Dunn, District Judge.

Order granting I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Spencer J. Hahn, 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; GUTIERREZ, Judge;
and MELANSON, Judge

PER CURIAM

Roy Elize Ferguson, III, pled guilty to felony eluding a police officer. I.C. § 49-1401(1), (2)(a), and/or (c). In exchange for his guilty plea, the state agreed not to pursue an allegation that Ferguson was a persistent violator. The district court sentenced Ferguson to a unified term of three years, with a minimum period of confinement of two years, but suspended the sentence and placed Ferguson on probation. Thereafter, Ferguson violated the terms of his probation. The district court revoked probation and ordered execution of the original sentence. Ferguson filed an I.C.R 35 motion, which the district court granted by retaining jurisdiction. Ferguson appeals, arguing that the district court should have further reduced the fixed portion of Ferguson’s sentence.

Initially, we note that a lower court's decision to grant or deny a Rule 35 motion will not be disturbed in the absence of an abuse of discretion. *State v. Villarreal*, 126 Idaho 277, 281, 882 P.2d 444, 448 (Ct. App. 1994). 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, 822 P.2d 1011 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 680 P.2d 869 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). Since the district court later modified Ferguson's sentence, pursuant to his Rule 35 motion, we will only review Ferguson's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992).

Ferguson has the burden of showing a clear abuse of discretion on the part of the district court in failing to further reduce the sentence on Ferguson's Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Ferguson has failed to show such an abuse of discretion. Accordingly, the order of the district court granting Ferguson's Rule 35 motion is affirmed.