

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 38088 & 38089

STATE OF IDAHO,)	2011 Unpublished Opinion No. 472
)	
Plaintiff-Respondent,)	Filed: May 12, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
DARRYL HENDERSON,)	THIS IS AN UNPUBLISHED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. Deborah A. Bail, District Judge.

Judgment of conviction and unified sentence of twenty-five years, with a minimum period of confinement of five years, for lewd conduct with a minor under sixteen, affirmed; judgment of conviction and unified sentence of ten years, with a minimum period of confinement of three years, for possession of forged checks affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief, Appellate Unit, Boise, for appellant.

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

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

PER CURIAM

In Docket No. 38088, Darryl Henderson pled guilty to lewd conduct with a minor under sixteen. I.C. § 18-1508. In exchange for his guilty plea, additional charges, including an allegation that Henderson was a persistent violator, were dismissed. The district court sentenced Henderson to a unified term of twenty-five years, with a minimum period of confinement of five years.

In Docket No. 38089, Henderson pled guilty to one count of possession of forged checks. I.C. § 18-3605. In exchange for his guilty plea, additional charges were also dismissed. The district court sentenced Henderson to a unified term of ten years, with a minimum period of confinement of three years, to run concurrent with his sentence in Docket No. 38088. Henderson filed an I.C.R 35 motion, which the district court denied. Henderson 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 Henderson'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, Henderson's judgments of conviction and sentences, and the district court's order denying Henderson's Rule 35 motion, are affirmed.