

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37755

STATE OF IDAHO,)	2011 Unpublished Opinion No. 751
)	
Plaintiff-Respondent,)	Filed: December 20, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
THOMAS LEE KALCO, III,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Gregory S. Anderson, District Judge.

Order granting 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; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Thomas Lee Kalco, III, entered an *Alford*¹ plea to statutory rape. I.C. § 18-6101(1). In exchange for his guilty plea, additional charges were dismissed. The district court sentenced Kalco to a unified term of six years, with a minimum period of confinement of one and a half years. Kalco filed an I.C.R 35 motion. The district court granted Kalco’s motion and modified his sentence by retaining jurisdiction but not reducing the underlying sentence. Following completion of the retained jurisdiction, the district court placed Kalco on probation for a period of ten years. Kalco appeals, claiming his underlying sentence is excessive.

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

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 Kalco's sentence, pursuant to his Rule 35 motion, we will only review Kalco's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992).

Fox 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 Kalco's Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Kalco has failed to show such an abuse of discretion. Therefore, the district court's order granting Kalco's Rule 35 motion is affirmed.