

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38431

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 602
	)	
Plaintiff-Respondent,	)	Filed: September 2, 2011
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
MARCUS DRAKE McGRAY,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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

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

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

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

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

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PER CURIAM

Marcus Drake McGray pled guilty to felony driving under the influence. I.C. § 18-8004, 18-8005(7). The district court sentenced McGray to a unified term of ten years, with a minimum period of confinement of four years, to run concurrent with an unrelated sentence. McGray appealed his sentence to this Court, which affirmed in an unpublished opinion. *State v. McGray*, Docket Nos. 34169 & 35244 (Ct. App. April 20, 2009). McGray filed an I.C.R 35 motion, which the district court denied. Over two years later, McGray filed a second Rule 35 motion seeking a reduction of his sentence, which the district court also denied. McGray appeals.

Idaho Criminal Rule 35 vests the trial court with jurisdiction to consider and act upon a motion to reduce a sentence that is filed within 120 days after the entry of a judgment of conviction unless that motion is to reduce an illegal sentence. Rule 35 further provides that no

defendant may file more than one motion seeking a reduction of sentence. The prohibition of successive motions under Rule 35 is jurisdictional. *State v. Bottens*, 137 Idaho 730, 732, 52 P.3d 875, 877 (Ct. App. 2002). Because McGray's Rule 35 motion was untimely and prohibitively successive, the district court's order denying McGray's Rule 35 motion is affirmed.