

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38133

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 462
	)	
Plaintiff-Respondent,	)	Filed: May 9, 2011
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JOHN A.P. METZGER,	)	THIS IS AN UNPUBLISHED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, Kootenai County. Hon. John T. Mitchell, District Judge.

Order relinquishing jurisdiction, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, 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

In this case we are asked to determine whether the district court abused its discretion in refusing to grant probation following a period of retained jurisdiction. We are also asked to review a unified sentence of ten years, with a minimum period of confinement of two years, for felony injury to a child. We affirm.

John A.P. Metzger pled guilty to an amended charge of felony injury to a child. I.C. § 18-1501(1). Following his plea, Metzger was sentenced to ten years, with a minimum period of confinement of two years,. The district court retained jurisdiction for 180 days, and Metzger was sent to participate in the rider program at the North Idaho Correctional Institution (NICI). After Metzger completed evaluation at NICI, the district court relinquished jurisdiction. Metzger

appeals, claiming that the district court erred by refusing to grant probation and that the district court should have sua sponte reduced his sentence upon relinquishment of jurisdiction.

We note that the decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990).

Pursuant to Idaho Criminal Rule 35, a court may reduce a sentence within 120 days after the court relinquishes jurisdiction. 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 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); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984).

The record in this case shows that the district court properly considered the information before it and determined that probation or modification of the sentence was not appropriate. Metzger has failed to show that the district court abused its discretion. Therefore, the district court's order relinquishing jurisdiction is affirmed.