

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38046

STATE OF IDAHO,)	2011 Unpublished Opinion No. 525
)	
Plaintiff-Respondent,)	Filed: June 17, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
SHANE K. POST,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Lansing L. Haynes, District Judge.

Order relinquishing jurisdiction, affirmed; order denying 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; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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

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 five years, with a minimum period of confinement of two years, for aggravated battery, and the district court’s denial of an I.C.R. 35 motion for reduction of sentence. For the reasons set forth below, we affirm.

Shane K. Post pled guilty to an amended count of aggravated assault. I.C. §§ 18-905, 18-906. In exchange for his guilty plea, additional charges were dismissed. Following his plea, Post was sentenced to a unified term of five years, with a minimum period of confinement of two years. The district court suspended the sentence and placed Post on probation. Thereafter, Post

admitted to violating terms of his probation. The district court revoked probation and ordered execution of the sentence. However, the district court retained jurisdiction for 180 days, and Post was sent to participate in the rider program at the North Idaho Correctional Institution (NICI).

After Post completed his rider, the district court relinquished jurisdiction. Post filed an I.C.R. 35 motion for reduction of his sentence, which the district court denied. Post appeals, claiming that the district court erred by refusing to grant probation and that his sentence is excessive and the district court should have sua sponte reduced it upon revocation of his probation. Post also asserts that the district court erred in denying his Rule 35 motion.

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).

The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that Post has failed to show that the district court abused its discretion.

Post also contends that the unified sentence five years, with a minimum period of confinement of two years, is excessive and that the district court should have reduced his sentence upon revocation of probation. Sentences are reviewed for an abuse of discretion. Our appellate standard of review and the factors to be considered when evaluating the reasonableness of a sentence are well-established. *State v. Burdett*, 134 Idaho 271, 1 P.3d 299 (Ct. App. 2000); *State v. Sanchez*, 115 Idaho 776, 769 P.2d 1148 (Ct. App. 1989); *State v. Reinke*, 103 Idaho 771, 653 P.2d 1183 (Ct. App. 1982); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (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).

Post argues that all of the relevant goals of sentencing could have been accomplished with probation. As noted above, however, the district court found that probation was not an appropriate course of action in Post's case. The record does not indicate that Post's sentence was an abuse of discretion in this case.

Post also asserts that the district erred in denying his 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. Having reviewed the entire record on appeal, we conclude the district court did not abuse its discretion in denying Post's Rule 35 motion.

The orders of the district court relinquishing jurisdiction and denying Post's Rule 35 motion are affirmed.