

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38101

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 590
	)	
Plaintiff-Respondent,	)	Filed: August 24, 2011
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
ADRIAN ROBINSON,	)	THIS IS AN UNPUBLISHED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 Second Judicial District, State of Idaho, Latah County. Hon. John R. Stegner, District Judge.

Judgment of conviction and unified sentence of five years, with a minimum period of confinement of eighteen months, for aggravated assault, affirmed; order denying appointed counsel on I.C.R 35 motion, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Shawn F. Wilkerson, 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 GRATTON, Chief Judge; GUTIERREZ, Judge;  
and MELANSON, Judge

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PER CURIAM

Adrian Robinson pled guilty to aggravated assault. I.C. §§ 18-901(b), 18-905(a), and 18-906. In exchange for his guilty plea, the state agreed not to pursue a sentencing enhancement. The district court sentenced Robinson to a unified term of five years, with a minimum period of confinement of eighteen months. Robinson filed an I.C.R 35 motion and a motion for appointment of counsel which the district court denied. Robinson 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 in sentencing Robinson.

Next, we review whether Robinson was entitled to appointed counsel at public expense to assist him with his Rule 35 motion. The appointment of counsel in Rule 35 proceedings is governed by I.C. §§ 19-852(b)(3), which requires the appointment of counsel in such cases "unless the court in which the proceeding is brought determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his own expense and is therefore a frivolous proceeding." A determination of whether the motion is frivolous is based upon the contents of the motion itself and any accompanying documentation and is committed to the court's discretion. *State v. Wade*, 125 Idaho 522, 525, 873 P.2d 167, 170 (Ct. App. 1994).

Robinson's motion referred to job offers he had received, that he was making efforts to "turn his life around," that he had made contacts with members of the faith community in Moscow who would help him, that he intended to attend a faith-based recovery group, and that he wanted to perform community service. Finally, he stated that his family was in desperate need of his support. In ruling on the motion, the district court wrote:

Even if Robinson's motion were timely, it would be denied. Robinson has a lengthy criminal history. He has shown, by his actions, an inability to conform his behavior to societal rules. In pleading guilty, the state withdrew its request for a substantial sentencing enhancement. The sentence imposed was, and remains, reasonable. Consequently, even if this motion were timely, there is no reason it should be granted.

With the exception of Robinson's claim that he had contacted members of the faith community and that he intended to attend a faith-based recovery group, his claims are similar to those asserted at sentencing. Robinson was required to show that his sentence was excessive in light of new or additional information. *See State v. Cobler*, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010). His new-found reliance upon faith-based recovery is salutary, but it does not overcome the serious nature of Robinson's violent criminal conduct. We find no abuse of discretion in the denial of Robinson's motion for court-appointed counsel.

Next, we review whether the district court erred in denying Robinson's Rule 35 motion.<sup>1</sup> 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, Robinson's judgment of conviction and sentence, and the district court's order denying Robinson's motion for appointment of counsel and Rule 35 motion, are affirmed.

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<sup>1</sup> The district court ruled that the motion was not timely but also denied the motion on the merits. On appeal, the state concedes that the motion was timely. Therefore, we only address the merits of the motion.