

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37731

STATE OF IDAHO,)	2011 Unpublished Opinion No. 465
)	
Plaintiff-Respondent,)	Filed: May 9, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
SCOTT SCHAR,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
_____)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gregory M. Culet, District Judge.

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

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief, Appellate Unit, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Russell J. Spencer, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Scott Schar pled guilty to an amended charge of sexual abuse of a minor. I.C. § 18-1506. In exchange for his guilty plea, an additional charge was dismissed. The district court sentenced Schar to a unified term of ten years, with a minimum period of confinement of five years, but retained jurisdiction. Following completion of Schar’s rider, the district court relinquished jurisdiction. Schar filed an I.C.R. 35 motion, which the district court denied. Schar appeals, arguing that the district court erred in denying his Rule 35 motion for reduction of sentence, erred in not holding a hearing on his motion, and in not extending the 120-day time limit to allow Schar to submit additional material in support of his 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).

Idaho Criminal Rule 35 provides that the district court may consider such motions without the admission of additional testimony and without oral argument. The decision whether to conduct a hearing is left to the sound discretion of the district court. *State v. Peterson*, 125 Idaho 522, 525, 887 P.2d 67, 70 (Ct. App. 1994). Upon review of the record, including the new information submitted with Schar's Rule 35 motion, we conclude that Schar has not shown that the district court abused its discretion in not holding a hearing on Schar's Rule 35 motion, in not extending the 120-day limit prior to ruling on the motion, or in denying the motion. Therefore, the district court's order denying Schar's Rule 35 motion is affirmed.