

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38027

STATE OF IDAHO,)	2011 Unpublished Opinion No. 616
)	
Plaintiff-Respondent,)	Filed: September 14, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
NICHOLAS HUGH STOREY,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

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; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Nicholas Hugh Storey plead guilty to felony operating a motor vehicle while under the influence of alcohol, Idaho Code §§ 18-8004, 8005(5), and providing false information to law enforcement, I.C. § 18-5413(2). The district court sentenced Storey to a unified term of nine years, with a minimum period of confinement of two years; however, the district court suspended the sentence and placed Storey on probation. Subsequently, Storey was found to have violated several terms of the probation. The district court revoked Storey’s probation and imposed the original sentence. Storey filed an Idaho Criminal Rule 35 motion, which the district court denied. Storey appeals contending the district court abused its discretion in denying his I.C.R. 35 motion by relying on improper information.

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.

An appellate review of a sentence is based on an abuse of discretion standard. *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). Where a sentence is not illegal, the appellant has the burden to show that it is unreasonable, and thus a clear abuse of discretion. *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992). A sentence may represent such an abuse of discretion if it is shown to be unreasonable upon the facts of the case. *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). The four objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *State v. Wolf*, 99 Idaho 382, 384, 582 P.2d 728, 730 (1978); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary “to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case.” *Toohill*, 103 Idaho at 568, 650 P.2d at 710.

Upon review of the record, including the new information submitted with Storey’s Rule 35 motion, we conclude no abuse of discretion has been shown. Nothing in the record indicates the district court relied on anything other than the objectives guiding sentencing. Therefore, the district court’s order denying Storey’s Rule 35 motion is affirmed.