

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37530

STATE OF IDAHO,)	2011 Unpublished Opinion No. 316
)	
Plaintiff-Respondent,)	Filed: January 11, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
SCOTT HENRY UNDERHILL,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Jon J. Shindurling, District Judge.

Order granting 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; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Scott Henry Underhill pled guilty to one count of delivery of methamphetamine. I.C. § 37-2732(a)(1)(A). In exchange for his guilty plea, an additional count was dismissed. The district court sentenced Underhill to a unified term of fifteen years, with a minimum period of confinement of five years, to run concurrent with an unrelated sentence. Underhill filed an I.C.R 35 motion, which the district court granted by suspending Underhill’s sentence and placing him on probation for five years. Underhill appeals.

Initially, we note that a lower court’s decision to grant or deny a Rule 35 motion will not be disturbed in the absence of an abuse of discretion. *State v. Villarreal*, 126 Idaho 277, 281, 882 P.2d 444, 448 (Ct. App. 1994). 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, 822 P.2d 1011 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 680 P.2d 869 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). Since the district court later modified Underhill's sentence, pursuant to his Rule 35 motion, we will only review Underhill's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992).

Underhill has the burden of showing a clear abuse of discretion on the part of the district court in failing to further reduce the sentence on Underhill's Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Underhill has failed to show such an abuse of discretion. Therefore, the district court's order granting Underhill's Rule 35 motion is affirmed.