

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37661

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 455
	)	
<b>Plaintiff-Respondent,</b>	)	<b>Filed: May 4, 2011</b>
	)	
v.	)	<b>Stephen W. Kenyon, Clerk</b>
	)	
<b>KEKOA GLENN GAUNAVINAKA,</b>	)	<b>THIS IS AN UNPUBLISHED</b>
	)	<b>OPINION AND SHALL NOT</b>
<b>Defendant-Appellant.</b>	)	<b>BE CITED AS AUTHORITY</b>
	)	

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Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Bradly S. Ford, District Judge.

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

Molly J. Huskey, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

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

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

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PER CURIAM

Kekoa Glenn Gaunavinaka was found guilty of lewd conduct with a minor under sixteen. Idaho Code § 18-1508. The district court sentenced Gaunavinaka to a unified term of life, with a minimum period of confinement of twenty-five years. Gaunavinaka filed an Idaho Criminal Rule 35 motion, which the district court granted, in part, by reducing the determinate term to twenty years, but maintaining the indeterminate life term. Gaunavinaka appeals, asserting that the unified sentence of life, with the determinate portion being reduced to twenty years remains excessive in light of the mitigating factors.

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, 181, 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 partially modified Gaunavinaka's sentence, pursuant to his Rule 35 motion, we will only review Gaunavinaka's modified sentence for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992).

Gaunavinaka 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 Gaunavinaka's Rule 35 motion. *See State v. Cotton*, 100 Idaho 573, 577, 602 P.2d 71, 75 (1979). Gaunavinaka has failed to show such an abuse of discretion. Accordingly, the order of the district court granting, in part, Gaunavinaka's Rule 35 motion is affirmed.