

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37730

STATE OF IDAHO,	)	2011 Unpublished Opinion No. 421
	)	
Plaintiff-Respondent,	)	Filed: April 1, 2011
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
SANTOS RUIZ, JR.,	)	THIS IS AN UNPUBLISHED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 Third Judicial District, State of Idaho, Canyon County. Hon. Gregory M. Culet, District Judge.

Order relinquishing jurisdiction and order denying I.C.R. 35 motion, 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.

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

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PER CURIAM

Santos Ruiz, Jr. pled guilty to aggravated battery. Idaho Code §§ 18-903(a), 18-907. The district court sentenced Ruiz to a unified sentence of six years with two years determinate and retained jurisdiction. Following the period of retained jurisdiction, the district court relinquished jurisdiction and ordered execution of Ruiz’s sentence. Ruiz filed an Idaho Criminal Rule 35 motion, which the district court denied. Ruiz appeals asserting that the district court abused its discretion by relinquishing jurisdiction and by denying his Rule 35 motion.

We note that the decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102

Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that Ruiz has failed to show that the district court abused its discretion, and we therefore affirm the order relinquishing jurisdiction.

The trial court, upon relinquishing jurisdiction, is authorized under Idaho Criminal Rule 35 to reduce the sentence. 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 and need not be repeated here. 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).

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).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in relinquishing jurisdiction and ordering execution of Ruiz's sentence or by denying his Rule 35 motion. Therefore, the order relinquishing jurisdiction and directing execution of Ruiz's sentence, and the order denying Ruiz's Rule 35 motion are affirmed.