IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Jerimi Albiston, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050179-CA F I L E D (October 6, 2005) 2005 UT App 425

First District, Logan Department, 041100795
The Honorable Thomas L. Willmore

Attorneys: Barbara King Lachmar, Logan, for Appellant
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake City, for Appellee

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Before Judges Billings, McHugh, and Orme.

PER CURIAM:

Jerimi Albiston appeals the district court's denial of her motion for a sentence reduction pursuant to Utah Code section 76-3-402. See Utah Code Ann. § 76-3-402 (2003). We affirm.

On December 2, 2004, Albiston pleaded guilty to a first degree felony. However, Albiston moved the district court to reduce the offense to a second degree felony pursuant to section 76-3-402(1). This request was denied, and Albiston was sentenced to a term of five years to life.

Albiston contends the district court abused its discretion when it denied the motion for reduction of sentence under section 76-3-402(1). That section states, in relevant part:

> If the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, concludes it

> would be unduly harsh to record the conviction as being for that degree of offense established by statute and to sentence the defendant to an alternative normally applicable to that offense, the court may unless otherwise specifically provided by law enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.

Utah Code Ann. § 76-3-402(1).

We afford the district court wide latitude and discretion when reviewing issues of sentencing. See State v. Boyd, 2001 UT 30,¶31, 25 P.3d 985; see also State v. Woodland, 945 P.2d 665, 671 (Utah 1997). "An appellate court will set aside a sentence imposed by the trial court if the sentence represents an abuse of discretion." Woodland, 945 P.2d at 671 (quotations and citations omitted). "An abuse of discretion results when the judge fails to consider all legally relevant factors or if the sentence imposed is clearly excessive." State v. McCovey, 803 P.2d 1234, 1235 (Utah 1990) (quotations and citations omitted). Sentencing requires such discretion because it "necessarily reflects the personal judgment of the court." State v. Gerrard, 584 P.2d 885, 887 (Utah 1978) (citation omitted).

Albiston has failed to make any showing that the district court abused its discretion when it denied the motion to reduce her sentence. For instance, there is no showing that the district court failed to consider any legally relevant factors. To the contrary, the record is clear that the district court specifically reviewed all materials on file, including all materials presented by Albiston, and specifically considered each of her arguments for reduction. Indeed, Albiston concedes that the district court considered all legally relevant factors prior to sentencing. The district court simply found that, after review of all relevant materials, there was no basis for a reduction in sentence pursuant to section 76-3-402.

In addition, Albiston makes no showing that the sentence imposed was "clearly excessive." McCovey, 803 P.2d at 1235. The sentence was appropriate for a first degree felony, see Utah Code Ann. § 76-3-203(1) (2003) (stating that a person convicted of a first degree felony may be sentenced to imprisonment "for a term of not less than five years and which may be for life"), and the district court noted that other charges had already been reduced or dismissed as a result of Albiston's plea. Thus, there is no

basis for concluding that the district court abused its discretion in failing to reduce Albiston's sentence.

Therefore, we affirm the order of the district court.

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Judith M. Billings,
Presiding Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge