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## State v. Geiger Respondent's Brief Dckt. 42838

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 42838
Plaintiff-Respondent,	)	
	)	Kootenai County Case No.
v.	)	CR-2013-22592
	)	
RODNEY M. GEIGER,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Geiger failed to establish that the district court abused its discretion, either by imposing an underlying unified sentence of six years, with three years fixed, upon the jury verdict finding him guilty of delivery of methamphetamine, or by denying his Rule 35 motion for a reduction of sentence?

Geiger Has Failed To Establish That The District Court Abused Its Sentencing Discretion

A jury found Geiger guilty of delivery of methamphetamine and the district court imposed a unified sentence of six years, with three years fixed, suspended the sentence, and placed Geiger on supervised probation for three years. (R., pp.139, 144-

49.) Geiger filed a notice of appeal timely from the judgment of conviction. (R., pp.160-62.) He also filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.173-74, 178-79.)

Geiger asserts his sentence is excessive in light of his status as a first-time felon, physical and mental health problems, and family support. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum penalty for delivery of methamphetamine is life in prison and a \$25,000 fine. I.C. § 37-2732(a)(1)(A). The district court ordered that Geiger pay a fine of only \$2,500, placed him on supervised probation, and imposed an underlying unified sentence of six years, with three years fixed, which falls well within the statutory

guidelines. (R., pp.144-49.) At sentencing, the district court stated that the underlying sentence was necessary to protect the public, particularly in light of the seriousness of the offense. (10/31/14 Tr., p.9, Ls.7-24.) Indeed, the record indicates that Geiger was selling a highly destructive drug to members of the community purely for monetary gain, as he claimed not to have a substance abuse problem – a factor that the district court found “makes this a more severe case than otherwise.” (10/31/14 Tr., p.9, Ls.7-10.) The underlying sentence imposed is appropriate in light of the serious nature of the offense and the risk such conduct poses to society. Given any reasonable view of the facts, Geiger has failed to establish an abuse of discretion.

Geiger next asserts that the district court abused its discretion by denying his Rule 35 motion. If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Geiger must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Geiger has failed to satisfy his burden.

In his Rule 35 motion for a reduction of sentence, Geiger requested that his fine of \$2,500 be reduced, reiterating that he was on social security disability and submitting another estimate of his monthly income and expenses. (R., pp.173-76.) This was not new information before the district court, as information with respect to Geiger’s monthly income and expenses was included both in the PSI and in the financial statement that Geiger filled out in support of his request for a court-appointed attorney. (PSI, p.10; R., pp.12-13.) Because Geiger presented no new evidence in support of his Rule 35

motion, he failed to demonstrate in the motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm Geiger's conviction and sentence and the district court's order denying Geiger's Rule 35 motion for a reduction of sentence.

DATED this 7<sup>th</sup> day of October, 2015.

/s/ \_\_\_\_\_  
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VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 7<sup>th</sup> day of October, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ \_\_\_\_\_  
LORI A. FLEMING  
Deputy Attorney General