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State v. Norton Respondent's Brief Dckt. 43606

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 43606, 43607 & 43608
Plaintiff-Respondent,)	
)	Ada County Case Nos.
v.)	CR-2007-408, CR-2011-14292
)	& CR-2013-6175
CRYSTAL ANNE NORTON aka MAY,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Norton failed to establish that the district court abused its discretion by denying her Rule 35 motions for reduction of her concurrent unified sentences of seven years, with three years fixed, for felony DUI, 10 years, with two years fixed, for a second felony DUI, and five years, with two years fixed, for felony eluding a peace officer?

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

In 2007, Norton pled guilty to felony DUI (two or more within 10 years) in case number 43606 and the district court withheld judgment and placed Norton on supervised probation for seven years with the condition that she successfully complete

Bridge Court. (R., pp.37-42.) In 2008, Norton violated her probation and the district court reinstated her on probation. (R., pp.49-54.) In 2009, Norton violated her probation a second time, by committing two new DWP's and consuming and possessing alcohol. (R., pp.60-62, 89.) The district court again reinstated Norton on supervised probation for seven years. (R., pp.91-94.)

In 2011, Norton violated her probation in case number 43606 a third time, by committing the new crimes of felony DUI (prior felony DUI within 15 years) and resisting or obstructing officers in case number 43607. (R., pp.114-16, 139.) The district court revoked Norton's probation in case number 43606, imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.141-43.) In case number 43607, Norton pled guilty to felony DUI (prior felony DUI within 15 years) and resisting or obstructing officers, and the district court imposed a concurrent unified sentence of 10 years, with two years fixed, and retained jurisdiction. (R., pp.295-98.) In April 2012, following the period of retained jurisdiction, the district court suspended Norton's sentences and once again placed Norton on supervised probation, for seven years in case number 43606 and for 10 years in case number 43607. (R., pp.146-51, 302-08.)

In May 2013, Norton violated her probation in case numbers 43606 and 43607, by committing the new crimes of felony eluding a peace officer and DWP in case number 43608. (R., pp.166-68, 191, 309-11, 338.) In case numbers 43606 and 43607, the district court revoked Norton's probation, ordered the underlying sentences executed, and retained jurisdiction a second time. (R., pp.193-95, 340-42.) In case number 43608, Norton pled guilty to felony eluding a peace officer and the district court imposed a concurrent unified sentence of five years, with two years fixed, and retained

jurisdiction.¹ (R., pp.449-51.) In January 2014, following the period of retained jurisdiction, the district court suspended Norton's sentences and placed Norton on supervised probation, for seven years in case number 43606, for 10 years in case number 43607, and for five years in case number 43608. (R., pp.203-08, 350-55, 460-66.)

Approximately three months later, in March 2014, Norton again violated her probation, by failing to submit to UA testing and absconding supervision. (R., pp.219-22, 241, 364-66, 387, 475-77, 498.) Norton was at large for approximately one year before being apprehended. (R., pp.220, 229-30, 375-76, 486-87.) The district court finally revoked Norton's probation and ordered the underlying sentences executed in all three cases. (R., pp.243-45, 389-91, 500-02.) Norton filed timely Rule 35 motions for reduction of sentence, which the district court denied. (R., pp.246-47, 254-55, 392-93, 400-01, 503-04, 511-12.) Norton filed a notice of appeal in each case, timely only from the district court's orders denying her Rule 35 motions. (R., pp.256-58, 402-04, 513-15.)

"Mindful of *State v. Huffman*, 144 Idaho 201 (2007)," Norton asserts that the district court abused its discretion by denying her Rule 35 motions for reduction of her sentences in light of "the nature of the crimes, her character, and the objectives of

¹ Norton also pled guilty to DWP in case number 43608, for which she received a 30-day jail sentence, with credit for 30 days served. (R., pp.449-51.)

sentencing.” (Appellant’s brief, pp.4-6.) Norton has failed to establish an abuse of discretion.

In State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007), the Idaho Supreme Court observed that a Rule 35 motion “does not function as an appeal of a sentence.” The Court noted that where a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. Id. Thus, “[w]hen 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 Rule 35 motion.” Id. Absent the presentation of new evidence, “[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence.” Id. Accord State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008).

Norton did not appeal the judgments of conviction in these cases. On appeal, she merely argues that her sentences were excessive as originally imposed and, therefore, the district court should have reduced her sentences pursuant to her Rule 35 motions. (Appellant’s brief, pp.5-6.) Because Norton presented no new evidence in support of her Rule 35 motions, she failed to demonstrate in the motions that her sentences were excessive. Having failed to make such a showing, she has failed to establish any basis for reversal of the district court’s orders denying her Rule 35 motions for reduction of her sentences.

Conclusion

The state respectfully requests this Court to affirm the district court's orders denying Norton's Rule 35 motions for reduction of sentence.

DATED this 3rd day of March, 2016.

/s/ Lori A. Fleming
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Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of March, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
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