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State v. Stevens Respondent's Brief Dckt. 43909

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43909
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2011-1915
)	
SHANE RYAN STEVENS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Stevens failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of his unified sentence of six years, with two years fixed, imposed following his guilty plea to third degree arson?

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

Stevens pled guilty to third degree arson and the district court imposed a unified sentence of six years, with two years fixed, suspended the sentence, and placed Stevens on supervised probation for six years. (R., pp.46-52.) After Stevens violated

his probation, the district court revoked probation, ordered the underlying sentence executed, and retained jurisdiction. (R., pp.78-80.) Following the period of retained jurisdiction, the district court again suspended Stevens' sentence and placed him on supervised probation for six years. (R., pp.83-88.) After Stevens violated his probation a second time, the district court again revoked his probation, ordered the underlying sentence executed, and retained jurisdiction a second time. (R., pp.116-18.) Following the second period of retained jurisdiction, the district court once again suspended Stevens' sentence and placed him on supervised probation for six years. (R., pp.121-25.) Stevens subsequently violated his probation a third time, and the district court finally revoked his probation and ordered the underlying sentence executed. (R., pp.172-74.) Stevens filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.175-76, 185-86.) Stevens filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.187-89.)

Stevens asserts the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his employment at Big Jud's and his "prior successful completion of two periods of retained jurisdiction." (Appellant's brief, pp.3-5.) Stevens 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).

Stevens did not appeal the judgment of conviction in this case. The only information he provided in support of his Rule 35 motion was that the owner of Big Jud’s (who was an old family friend) felt that Stevens was a good employee and would “re-hire [Stevens] if he should need employment in the future.” (R., p.182.) This was not new or additional information because the district court was aware, at the time of the November 30, 2015, disposition hearing, that Stevens worked at Big Jud’s for a short period of time while on probation, that the owner was a friend of Stevens’ family, and that Stevens believed he would be rehired at Big Jud’s. (Tr., p.7, Ls.16-23.) Because Stevens 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.

Even if this Court addresses the merits of Stevens’ claim, Stevens has still failed to establish an abuse of discretion. Stevens performed abysmally on probation and failed to demonstrate rehabilitative progress. He completed his second period of retained jurisdiction in this case and was granted his *third* opportunity on probation in March 2015. (R., p.121.) He tested positive for methamphetamine approximately one month later. (R., p.131.) Thereafter, Stevens changed residences without permission, failed to report for supervision appointments, committed a battery after being refused

entry to a night club/bar, and absconded supervision. (R., pp.130-31.) In its order denying Stevens' Rule 35 motion for sentence reduction, the district court stated:

The defendant has twice absconded from his probation. He has had two riders. In addition to absconding, he tested positive for the use of methamphetamine and was involved in an altercation. He has forfeited any further right to probation on this case by his own behavior. The Court stated its reasons for the sentence it imposed on the record at the time of sentencing. All of those reasons remain valid. The sentence was fair.

(R., p.186.)

Stevens has not shown that he was entitled to a reduction of sentence, particularly in light of his continued criminal conduct, refusal to abide by the conditions of probation, repeated absconding behavior, and failure to rehabilitate despite having been granted numerous rehabilitative opportunities. Given any reasonable view of the facts, Stevens has failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence.

Conclusion

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

DATED this 9th day of June, 2016.

/s/
KENNETH K. JORGENSEN
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of June, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/
KENNETH K. JORGENSEN
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