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State v. Reed Respondent's Brief Dckt. 43912

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43912
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2012-12178
)	
RAHIM D. REED,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Reed failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of his unified sentence of seven years, with two years fixed, imposed upon his guilty plea to felony possession of a controlled substance?

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

Reed pled guilty to felony possession of a controlled substance and the district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.53-55.) Following the period of retained jurisdiction, the district

court placed Reed on probation. (R., pp.59-64.) Reed subsequently violated his probation, and the district court retained jurisdiction a second time. (R., pp.103-07.) Following the second period of retained jurisdiction, the court again placed Reed on probation. (R., pp.110-14.) Reed again violated his probation, and the district court revoked his probation and executed the underlying sentence. (R., pp.156-61.) Reed filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.165-66, 170-71.) Reed filed a notice of appeal timely only from the denial of his Rule 35 motion. (R., pp.172-74.)

“Mindful of the fact that he did not present any new or additional information,” Reed nevertheless asserts that the district court abused its discretion by not reducing his sentence pursuant to 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, Reed 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. Reed has failed to satisfy his burden.

Rule 35 functions to allow a defendant to request leniency in light of “new or additional” information that was not available at the time of sentencing. Reed provided no new information in support of his Rule 35 motion. He merely stated that his sentence was excessive. As such, no “new or additional” information was provided. Because Reed presented no new information, he failed to demonstrate in his Rule 35

motion that his sentence was excessive. Having failed to make such a showing, he has failed to establish any basis for a reduction of his sentence.

Conclusion

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

DATED this 12th day of July, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of July, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Lori A. Fleming
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