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State v. Williams Respondent's Brief Dckt. 44304

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44304
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2014-7507
)	
ZACHARY ERIC WILLIAMS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Williams failed to show any basis for reversal of the district court's order denying his Rule 35 motion for a reduction of sentence?

Williams Has Failed To Establish Any Basis For Reversal Of The District Court's Order Denying His Rule 35 Motion

Williams pled guilty to possession of methadone and the district court imposed a unified sentence of four years, with two years fixed, suspended the sentence, and placed Williams on supervised probation for four years. (R., pp.42-43, 56-57, 85-89.) After Williams violated his probation, the district court revoked his probation, ordered the

underlying sentence executed, and retained jurisdiction. (R., pp.122-23.) Following the period of retained jurisdiction, the district court again suspended Williams' sentence and placed him on supervised probation for four years. (R., pp.130-34.) Williams subsequently violated his probation a second time, and the district court revoked his probation and ordered the underlying sentence executed. (R., pp.179-81.) Williams filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.177-78, 188-89.) Williams filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.190-93.)

"Mindful that [he] did not present new or additional information in support of his Rule 35 motion," Williams nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion. (Appellant's brief, pp.3-4.) Williams 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).

Williams did not appeal the judgment of conviction in this case. On appeal, he acknowledges that he “did not present new or additional information in support of his Rule 35 motion.” (Appellant’s brief, p.3.) Because Williams 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 the district court’s order denying Williams’ Rule 35 motion for a reduction of sentence.

DATED this 3rd day of January, 2017.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of January, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

/s/ Lori A. Fleming
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Deputy Attorney General