

1-17-2017

## State v. Roberts Respondent's Brief Dckt. 44356

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IN THE SUPREME COURT OF THE STATE OF IDAHO

|                       |   |                       |
|-----------------------|---|-----------------------|
| STATE OF IDAHO,       | ) |                       |
|                       | ) | NO. 44356             |
| Plaintiff-Respondent, | ) |                       |
|                       | ) | Teton County Case No. |
| v.                    | ) | CR-2016-47            |
|                       | ) |                       |
| LANCE ALLEN ROBERTS,  | ) |                       |
|                       | ) | RESPONDENT'S BRIEF    |
| Defendant-Appellant.  | ) |                       |
| _____                 | ) |                       |

Issue

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

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

Roberts pled guilty to felony DUI, with a persistent violator enhancement, and the district court imposed a unified sentence of 20 years, with five years fixed. (R., pp.56-58.) Roberts filed a notice of appeal timely from the judgment of conviction. (R., pp.69-71.) He also filed a timely Rule 35 motion for a reduction of sentence, which the district

court denied. (R., pp.72-73; 9/20/16 Tr., p.25, L.17 – p.26, L.16; see also Teton County case number CR-2016-47 at <https://www.idcourts.us/repository/caseNumberSearch.do> (according to the Register of Actions, the district court entered its order denying Roberts' Rule 35 motion for a reduction of sentence on October 4, 2016).)

Mindful of “the fact that no new or additional information was presented,” Roberts nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion in light of “the testimony presented at the sentencing hearing and the letters of support in the presentence investigation report” and his claim that his trial counsel “represented to him that the district court would follow the joint sentencing recommendation.” (Appellant’s brief, pp.4-5.) Roberts has failed to establish any basis for reversal of the district court’s order denying his Rule 35 motion.

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).

On appeal, Roberts acknowledges that he failed to provide any new or additional information in support of his Rule 35 motion for a reduction of sentence. (Appellant’s

brief, p.4.) Because Roberts 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 Roberts' Rule 35 motion for a reduction of sentence.

DATED this 17th 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 17th day of January, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD  
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  
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Deputy Attorney General