

5-26-2017

State v. Riley Respondent's Brief Dckt. 44741

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LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44741
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2014-17102
)	
KENNETH DWAYNE RILEY,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Riley failed to establish that the district court abused its discretion, either by revoking his probation, or by denying his oral Rule 35 motion for reduction of his sentence, imposed following his guilty plea to grand theft?

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

Riley pled guilty to grand theft and, on December 21, 2015, the district court imposed a unified sentence of 14 years, with seven years fixed, suspended the sentence, and placed Riley on supervised probation for 10 years. (R., pp.49-57.) Six months later, Riley violated the conditions of his probation by committing two new

crimes, aggravated battery and violation of a no contact order. (R., pp.67-70.) Riley admitted the allegations and the district court revoked his probation and ordered the underlying sentence executed. (R., pp.83-85.) At the disposition hearing, Riley made an oral Rule 35 motion, which the district court denied. (R., p.82 12/15/16 Tr., p.22, Ls.14-17.) Riley filed a notice of appeal timely from the district court's order revoking probation. (R., pp.86-88.)

Riley asserts that the district court abused its discretion by revoking his probation in light of his successful efforts on probation. (Appellant's brief, pp.3-6.) Riley has failed to establish an abuse of discretion.

'Probation is a matter left to the sound discretion of the court.' I.C. § 19-2601(4). The decision to revoke probation lies within the sound discretion of the district court. State v. Roy, 113 Idaho 388, 392, 744 P.2d, 116, 120 (Ct. App. 1987); State v. Drennen, 122 Idaho 1019, 842 P.2d 698 (Ct. App. 1992). When deciding whether to revoke probation, the district court must consider "whether the probation [was] achieving the goal of rehabilitation and [was] consistent with the protection of society." Drennen, 122 Idaho at 1022, 842 P.2d at 701.

Riley is not an appropriate candidate for probation. He has a lengthy criminal history that dates back to 2000 and includes juvenile adjudications for petit theft, carrying a concealed weapon, possession of drug paraphernalia, contempt of court, and numerous curfew violations. (PSI, pp.135-42.) His juvenile record also includes a number of charges that were either dismissed or for which the disposition is unknown, including resisting and obstructing officers, disturbing the peace, battery, theft by receiving/possessing stolen property, and eluding. (PSI, pp.135-42.) Riley's adult

criminal record includes convictions for contempt of court, two counts of racing on a public highway (one of which was amended from reckless driving), two counts of disturbing the peace (one of which was amended from battery), battery, and arson. (R., pp.143-46.) He has also been charged as an adult with domestic battery or assault in the presence of a child, unlawful entry, malicious injury to property, and burglary. (PSI, pp.143-46.) Riley has a history of failing to comply with court orders and the terms of community supervision. (PSI, pp.8-9.) After completing a CAPP rider in December of 2012, Riley was placed on supervised probation; however, in 2014 a report of violation was filed alleging that Riley had violated the terms of his probation by moving without permission, testing positive for drugs, failing to complete programming, failing to earn his GED, and failing to pay the costs of supervision. (PSI, p.8.) After the report was filed, Riley committed the grand theft of which he was convicted in this case and then absconded supervision by fleeing to California. (PSI, p.8.) A warrant was issued and Riley was extradited back to Idaho where he was found in violation of his probation. (PSI, p.8.)

At the disposition hearing for Riley's probation violation for this case, the district court noted Riley had a lengthy criminal history and had multiple opportunities at probation, but those opportunities "failed to essentially provide any meaningful rehabilitation" (12/15/16 Tr., p.27, Ls.1-4.) Probation was clearly not serving the purpose of rehabilitation in this case, as evinced by Riley's disregard for the conditions of probation. Neither was probation achieving the goal of community protection, given Riley's aggravated battery conviction. Riley's continued criminal behavior, his inability to comply with the conditions of community supervision, and his failure to make any

rehabilitative progress while in the community did not merit continued probation. Given any reasonable view of the facts, Riley has failed to establish that the district court abused its discretion by revoking his probation.

Riley next asserts the district court abused its discretion by denying his oral Rule 35 motion for a reduction of sentence. (Appellant's brief, pp.6-7.) 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).

In support of his oral Rule 35 motion, Riley told the district court at the disposition hearing that after his daughter passed away, he went to his probation officer and asked for help because he wanted to use methamphetamine. (12/15/16/ Tr., p.21, L.15–p.22, L.17; see also Appellant's brief, p.7.) The district court considered Riley's Rule 35 request but rejected it, stating, "I think that fundamentally [the] defendant has had multiple chances at probation and rehabilitation. I find that he's a danger to the community and that the original sentence was appropriate. ... The charge in this case that he beat and stabbed his wife while on probation is simply inexcusable." (12/15/16 Tr. p.26, Ls.7-19.) Riley's attempt to get help from his probation officer rather than

resorting to the use of methamphetamine, while laudable, was not itself sufficient to demonstrate his sentence was excessive, especially in light of the violence he perpetrated on his wife while being supervised. Riley has failed to establish any basis for reversal of the district court's order denying his oral Rule 35 motion.

Conclusion

The state respectfully requests this Court to affirm the district court's orders revoking probation and denying Riley's oral Rule 35 motion for a reduction of sentence.

DATED this 26th day of May, 2017.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of May, 2017, served a true and correct copy of the attached RESPONDENTS 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
LORI A. FLEMING
Deputy Attorney General