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State v. Parker Respondent's Brief Dckt. 44825

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	Nos. 44825 & 44826
Plaintiff-Respondent,)	
)	Canyon County Case Nos.
v.)	CR-2015-3953 & CR-2015-8250
)	
ROY EUGENE PARKER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Parker pled guilty to solicitation to commit the crime of intimidating a witness and the district court imposed a unified sentence of two and one-half years, with one and one-half years fixed, suspended the sentence, and placed Parker on supervised

probation for two and one-half years in case number 44826.¹ (R., pp.78-80.) After Parker violated his probation, the district court revoked probation, executed the underlying sentence, and retained jurisdiction. (R., pp.133-35.) Parker filed a timely Rule 35 motion for reduction of sentence, which the district court denied. (R., pp.136-39, 150-55.) Parker filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.158-61.)

Mindful that his Rule 35 motion for a reduction of sentence “contains no new or additional information,” Parker nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion in light of his claims that he ““was working hard on probation”” and his probation violations were ““due to his financial circumstances and a lapse in judgment,”” and because he obtained employment while on probation. (Appellant's brief, pp.3-5 (quoting R., pp.137-38).) Parker has failed to establish any basis for reversal of the district court's order denying 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, Parker 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. Parker has failed to satisfy his burden.

¹ Parker does not raise any issues on appeal in case number 44825. (Appellant's brief, pp.3-4.)

On appeal, Parker acknowledges that he provided no new or additional information in support of his Rule 35 motion for a reduction of sentence. (Appellant's brief, p.4.) Because Parker 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 for a reduction of sentence.

Conclusion

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

DATED this 26th day of July, 2017.

/s/ Lori A. Fleming
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Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of July, 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.

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