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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45412
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2015-392
)	
CHARLES ADAM SMITH,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Smith failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of his unified sentence of 10 years, with five years fixed, imposed following his guilty plea to providing false information in sex offender registration?

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

Smith pled guilty to providing false information in sex offender registration and the district court imposed a unified sentence of 10 years, with five years fixed, and retained jurisdiction. (R., pp.41-43.) Following the period of retained jurisdiction, the district court

suspended Smith's sentence and placed him on supervised probation for three years. (R., pp.48-54.)

Less than one month later, Smith's probation officer filed a report of violation alleging that Smith had violated the conditions of his probation by committing the new crime of failure to register as a sex offender. (R., pp.56-57.) Smith's probation officer subsequently filed addenda to the report of violation, alleging that Smith had also violated the conditions of his probation by, *inter alia*,¹ consuming alcohol, failing to begin sex offender treatment, failing to pay his cost of supervision, possessing pornography, engaging in a sexual relationship without authorization, changing employment without permission, possessing charcoal tablets, and committing the new crime of frequenting a place where controlled substances are used. (R., pp.75-76, 82-85.) Smith admitted that he violated the conditions of his probation by committing the new crime of obstructing (amended from failure to register as a sex offender), consuming alcohol, failing to pay his cost of supervision, and engaging in a sexual relationship without authorization, and the state withdrew the remaining allegations. (R., pp.100-01.) The district court revoked Smith's probation, executed the underlying sentence, and retained jurisdiction a second time. (R., pp.102-04.) Following the second period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.107-09.) Smith filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.110-11, 134-35.) Smith filed a notice of appeal timely from the district court's order denying his Rule 35 motion. (R., pp.129-33.)

¹ Page 3 of the Second Addendum to the Report of Violation appears to be missing from the record. (See R., pp.82-85.)

Smith asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his alcohol abuse, recognition that “his use [of] alcohol is problematic,” willingness to participate in treatment, realization of “the importance of following the rules,” and because he was “having a difficult time getting into programming because there is no new programming that he has not already completed.” (Appellant’s brief, pp.3-5.) Smith 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).

Smith did not appeal the judgment of conviction in this case, and he provided no new information in support of his Rule 35 motion. (R., pp.110-11.) At the hearing on his Rule 35 motion, Smith merely reiterated that he realized the importance of following the rules and that his alcohol use was problematic, and stated, “I’m trying to get into some computer literacy classes and stuff. All the programming they won’t let me do again because I’ve already done it all and completed it all.” (9/5/17 Tr., p.3, L.18 – p.5, L.10.) Smith has previously claimed that he learned the importance of following the rules, and he has also previously acknowledged that his alcohol use is problematic and that he needs to abstain from alcohol; as such, this was not

new information before the district court. (4/17/17 Tr., p.3, Ls.20-21; PSI, pp.12, 23, 25.²) The district court was also aware, at the time that it relinquished jurisdiction, of Smith's willingness to participate in treatment and of the fact that he had previously completed an abundance of programming through the Idaho Department of Correction. (PSI, pp.11-12, 22-25, 48; 4/17/17 Tr., p.12, Ls.3-4.) Smith's claim that he was "having a difficult time getting into programming because there is no new programming that he has not already completed" (Appellant's brief, p.4) is likewise not new information that entitles him to a reduction of sentence, as the placement of inmates in programs lies within the discretion of the Idaho Department of Correction, and "alleged deprivation of rehabilitative treatment is an issue more properly framed for review either through a writ of habeas corpus or under the Uniform Post-Conviction Procedure Act." State v. Sommerfeld, 116 Idaho 518, 520, 777 P.2d 740, 742 (Ct. App. 1989) (affirming district court's denial of defendant's I.C.R. 35 motion). Because Smith presented no new evidence in support of his Rule 35 motion for a reduction of sentence, 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.

² PSI page numbers correspond with the page numbers of the electronic file "CR 15-392 SMITH #45412 PSI.pdf."

Conclusion

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

DATED this 20th day of April, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of April, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED
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