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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45545
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-17-904
)	
JAMES GORDON CREECH, II,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Creech pled guilty to grand theft and the district court imposed a unified sentence of eight years, with one year fixed. (R., pp.64-67.) Creech filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.71, 77-79.) Creech filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.80-82.)

“Mindful of the fact that [he] did not submit any new information in support of the motion,” Creech nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his employment, previous participation in substance abuse classes, “acknowledgement that his actions were irresponsible,” and purported remorse – all of which was before the district court at the time of sentencing. (Appellant’s brief, pp.1-3; PSI, p.3.¹) Creech 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).

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

¹ PSI page numbers correspond with the page numbers of the electronic file “Creech 45545 psi.pdf.”

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 Creech's Rule 35 motion for a reduction of sentence.

DATED this 17th 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 17th day of April, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS
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