

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

4-12-2018

State v. Murri Respondent's Brief Dckt. 45546

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Murri Respondent's Brief Dckt. 45546" (2018). *Not Reported*. 4564.
https://digitalcommons.law.uidaho.edu/not_reported/4564

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45546
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2014-7789
)	
AARON BLAINE MURRI,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Murri failed to establish that the district court abused its discretion by denying his Rule 35 motion for a reduction of his unified sentence of 20 years, with five years fixed, imposed upon his guilty plea to felony DUI with the persistent violator enhancement?

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

Murri pled guilty to felony DUI with the persistent violator enhancement and the district court imposed a unified sentence of 20 years, with five years fixed, to run consecutively to Murri's sentence in a prior felony DUI case, CR-FE-2007-824. (R., pp.85-88, 99-103.) Murri filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R.,

pp.89, 104-06.) Murri filed a notice of appeal timely from the district court's order denying his Rule 35 motion. (R., pp.107-09.)

Murri asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his desire to immediately participate in prison programs and the fact that he had remained disciplinary-free for a year while incarcerated. (Appellant's brief, pp.3-4.) Murri 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).

Murri did not appeal the judgment of conviction in this case, and he provided no new information in support of his Rule 35 motion that would entitle him to a reduction of his sentence. On appeal, he merely argues that the district court should have reduced his sentence because he wished to participate in prison programs sooner and had no discipline issues while incarcerated. (Appellant's brief, pp.3-4.) Murri's desire to rehabilitate and immediately participate in prison programs is not new information that entitles him to a reduction of sentence. The district court was aware, at the time of sentencing, of Murri's desire to participate in programming, and it is not "new" information that prisoners are most often placed in such

treatment nearer to their date of parole eligibility. (PSI, p.14.) Furthermore, acceptable behavior is no less than what is expected of inmates committed to the Department of Correction. State v. Cobler, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010) (in denying Rule 35 motion, trial court did not abuse discretion “in giving little or no weight to [defendant’s] good behavior in prison”). Because Murri presented no new evidence in support of his Rule 35 motion that would entitle him to 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.

Conclusion

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

DATED this 12th day of April, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of April, 2018, 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