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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45621
Plaintiff-Respondent,)	
)	Bannock County Case No.
v.)	CR-2015-7164
)	
JOSHUA CAUSER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Causer failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of sentence?

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

Pursuant to a plea agreement, Causer pled guilty to delivery of a controlled substance, and the district court imposed a unified sentence of six years, with three years fixed, but suspended the sentence and placed Causer on probation for a period of four years. (R., pp.126-31.) Four months later, Causer's probation officer filed a progress report advising the court that

Causer was being investigated for theft, was absconding supervision, and that his employment could not be verified. (R., p.134.) A bench warrant was issued, and Causer was later arrested on that warrant. (R., p.135.) A performance action plan was put in place in lieu of filing a probation violation, but Causer did not abide by the performance plan and was placed in the Crossroads program. (R., pp.140-41.) Causer continued to perform poorly on probation by absconding, failing to find employment, and abusing substances and, as a result, the district court ordered Causer to serve 14 days of discretionary jail time. (R., pp.145-46.) In March 2017, Causer's probation officer filed a report of probation violation alleging that Causer had violated the terms of his probation by: testing positive for suboxone, oxycontin, heroin, and methamphetamine "a total of seven times since November 29, 2016"; failing to report for drug testing; failing to maintain employment; and failing to complete 100 hours of community service. (R., pp.152-54.) Causer admitted the violations, and the district court revoked his probation, executed his sentence, and retained jurisdiction. (R., pp.156-59.) After a period of retained jurisdiction, the district court relinquished jurisdiction and executed the sentence. (R., pp.161-64.) Causer then filed a Rule 35 motion for reduction of sentence, which the district court denied. (R., pp.165-66, 170-71.) Causer filed a notice of appeal timely from the order denying his Rule 35 motion. (R., pp.172-75.)

Causer asserts that the district court abused its discretion by denying his Rule 35 motion for reduction of sentence in light of a letter he submitted to the court reiterating his regret and insight, and his "hard academic work." (Appellant's brief, pp.3-6.) Causer has failed to establish an abuse of discretion in the denial of his Rule 35 request for leniency.

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, Causer 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. Causer has failed to satisfy his burden.

Causer provided no new information in support of his Rule 35 motion. He merely provided a letter in which he requested a reduction of his sentence because he is close to obtaining his GED, regrets his actions over the last four years, and wants to be a better person. (PSI, pp.71-72.) The district court was aware of Causer’s regret and desire to be a better person at the time of sentencing. (PSI, pp.6, 16-18.) The district court was also aware that Causer wanted to further his education and attend college for graphic design. (PSI, p.13.) Because Causer 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.

Conclusion

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

DATED this 14th day of June, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14th day of June, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER
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