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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45868
Plaintiff-Respondent,)	
)	Minidoka County Case No.
v.)	CR-2017-354
)	
JAMES MICHAEL CONNER, III,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Conner pled guilty to burglary and the district court imposed a unified sentence of 10 years, with five years fixed, and retained jurisdiction. (R., pp.60-63.) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.72-76.) Conner filed a

timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.77-80.) Conner filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.85-87.)

“Mindful of the fact that [he] did not submit any new or additional information in support of his Rule 35 motion,” Conner nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his substance abuse, family support, and performance in the retained jurisdiction program. (Appellant's brief, pp.3-5.) Conner 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).

Conner did not appeal the judgment of conviction or the order relinquishing jurisdiction in this case. On appeal, Conner acknowledges that he provided no new or additional information in support of his Rule 35 motion for a reduction of sentence. (Appellant's brief, pp.1, 3, 5; R., pp.77-78.) Because Conner 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 Conner's Rule 35 motion for a reduction of sentence.

DATED this 9th day of October, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of October, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

SALLY J. COOLEY
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/s/ Lori A. Fleming
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