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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46139
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-16-41273
)	
BRUCE ALLEN MARCHANT,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Pursuant to a plea agreement, Marchant pled guilty to first degree murder and the district court imposed a fixed life sentence. (R., pp.80-83.) Marchant filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.88, 123-28.) Marchant filed a

notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.129-32.)

“Mindful that [he] did not support his Rule 35 motion with any new or additional information,” Marchant nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his mental health issues and purported remorse. (Appellant's brief, pp.3-4.) Marchant 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).

Marchant did not appeal the judgment of conviction in this case. On appeal, he 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, 3-4.) Because Marchant 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 Marchant's Rule 35 motion for a reduction of sentence.

DATED this 5th day of February, 2019.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of February, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JASON C. PINTLER
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/s/ Lori A. Fleming
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