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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46301-2018
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR01-2016-38655
)	
DANIEL TODD BURNINGHAM,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

Burningham Has Failed To Establish An Abuse Of Discretion In The Denial Of His Rule 35 Motion

A jury found Burningham guilty of aggravated assault, with and enhancement for the use of a firearm or deadly weapon during the commission of a crime, and the district court imposed a unified sentence of 10 years, with three years fixed. (R., pp.148-51.) Burningham filed a timely

Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.157-70, 176-78.) Burningham filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.179-81.)

Burningham argues that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of the fact that he was "working on his mental health," "remaining productive while incarcerated," and "preparing for success upon his release." (Appellant's brief, pp.2-4.) Burningham has failed to establish any abuse of discretion in the denial of 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).

Burningham did not appeal the judgment of conviction in this case, and the only new information Burningham submitted in support of his Rule 35 motion was his description of what he was doing while incarcerated, which included submitting several requests for programming, submitting an application for the food services program, reviewing self-help workbooks and thinking reports, and having "no behavioral problems with either staff or fellow inmates with the exception of a few unwelcome sexual advances committed by a couple inmates in extremely

isolated situations.” (R., pp.159-61.) Burningham also reiterated that he had family support and employment opportunities upon his release. (R., pp.160-61; 3/5/18 Tr., p.20, Ls.22-24.) The district court considered all of this information and concluded, in its discretion, that none of the information warranted a reduction in Burningham’s sentence. (R., p.177.) Furthermore, Burningham’s claim that the district court should have reduced his sentence in light of the fact that he had “no significant behavioral problems in prison” is not “new” information that entitles him to a reduction of sentence, as acceptable behavior is no less than what is expected of inmates committed to the Department of Correction. See State v. Cobler, 148 Idaho 769, 773, 229 P.3d 374, 378 (2010) (trial court's denial of defendant's motion for reduction of sentence was not an abuse of discretion; defendant's prison behavior did not provide valid grounds for a reduction in sentence).

Burningham failed to provide any new information that showed he was entitled to a reduction of sentence. Given any reasonable view of the facts, Burningham has failed to establish that the district court abused its discretion by denying his Rule 35 motion for reduction of sentence.

Conclusion

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

DATED this 3rd day of May, 2019.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of May, 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:

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/s/ Lori A. Fleming
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