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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46344-2018
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR01-16-33828
	)	
LARRY MICHAEL CLIFFORD, JR.,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

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

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

Clifford pled guilty to fraud by computer and the district court imposed a unified sentence of five years, with two years fixed. (R., pp.61-64.) Clifford filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.68-77.) Clifford filed

a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.78-80.)

Clifford asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence because he reiterated information – which was previously provided at sentencing – with respect to his physical health issues, recent death of his father, and support from his mother and his girlfriend. (Appellant's brief, pp.2-4.) Clifford 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).

Clifford did not appeal the judgment of conviction in this case, and he provided no new information in support of his Rule 35 motion for a reduction of sentence. As found by the district court in its order denying Clifford's Rule 35 motion, information with respect to Clifford's physical health issues, recent death of his father, and support from his mother and his girlfriend was all before the district at the time of sentencing. (R., pp.75-76; PSI, pp.11-12, 14-15, 207.) Because Clifford 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 Clifford'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:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us).

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