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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46455-2018
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2016-12184
)	
JAY RAY BRIGHT,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Bright pled guilty to possession of heroin with intent to deliver and the district court imposed a unified sentence of eight years, with four years fixed, suspended the sentence, and placed Bright on supervised probation for three years. (R., pp.50-52, 59, 77-84.) After Bright violated his probation by absconding supervision and committing the new crime of possession of

drug paraphernalia, the district court revoked his probation and executed the underlying sentence. (R., pp.106-08, 181-83, 190-92.) Bright filed a Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.188-89, 207-08.) Bright filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.209-12.)

Bright asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence in light of his "family situation" and his continued desire to participate in treatment for his substance abuse and mental health issues. (Revised Appellant's brief, pp.3-5.) Bright has failed to establish an abuse of discretion.

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).

Bright did not appeal the judgment of conviction in this case, and he did not provide any "new" information in support of his Rule 35 request for a reduction of sentence. Information with respect to Bright's desire to participate in treatment for his substance abuse and mental health issues, that his mother and uncle had terminal illnesses, that he had "[u]nresolved grief and loss issues," that he participated in the Good Samaritan treatment program while on probation, and that, before the disposition hearing, he set up additional treatment in another

treatment program to address both his substance abuse and mental health issues was before the district court at the time that it revoked Bright's probation. (R., pp.72-73; PSI, pp.12-15, 52-53, 56, 61, 63, 66-67¹; 7/27/18 Tr., p.10, Ls.5-13; p.11, L.24 – p.12, L.25.) Bright's statement, at the Rule 35 hearing, that his grandmother died in July 2017 and his grandfather died in approximately November 2017 was likewise not "new" information, as these events occurred nearly a year before the disposition hearing and, as set forth above, the district court was aware, at the time of the disposition hearing, that Bright had "[u]nresolved grief and loss issues," desired mental health treatment, and had set up treatment and counseling at Restored Paths. (PSI, pp.67-68; 9/14/18 Tr., p.9, Ls.12-24; p.10, Ls.18-25; 7/27/18 Tr., p.12, Ls.8-13.)

Because Bright 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.

¹ PSI page numbers correspond with the page numbers of the electronic file "Confidential Document Appeal Volume 1 1-11-2019 14.07.45 20187153 FB7B8CC1-AE0C-45F2-A251-F24544B23D5B.pdf."

Conclusion

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

DATED this 11th day of April, 2019.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of April, 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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