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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46590-2018
Plaintiff-Respondent,)	
)	Bonneville County Case No.
v.)	CR-2017-11589
)	
JESSE STEPHEN BARBER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

A jury found Barber guilty of felony intimidating a witness and the district court imposed a unified sentence of five years, with two years fixed. (R., pp.231-33.) Barber filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.227-28, 235-

36.) Barber filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.237-40.)

Barber asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence because he reiterated that he would like to participate in the retained jurisdiction program and a specialty court program. (Appellant's brief, pp.3-4.) Barber 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).

Barber did not appeal the judgment of conviction in this case, and he failed to provide any new information in support of his Rule 35 motion. At the hearing on his Rule 35 motion, Barber merely reiterated his argument that he wished to participate in the rider program, followed by a specialty court program, to "break the cycle," as he did not believe a prison sentence would help him change his criminal behavior. (11/5/18 Tr., p.29, L.17 – p.31, L.5.) This was not new information before the district court, as, at his sentencing hearing, Barber made a nearly identical argument. (8/16/18 Tr., p.6, Ls.3-5; p.8, L.21 – p.9, L.3; p.9, Ls.21-23; p.16, L.13 – p.19, L.3; p.20, L.23 – p.21, L.8; p.22, Ls.3-11; PSI, pp.17, 20.) Because Barber

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.

Conclusion

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

DATED this 19th 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 19th 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:

JENNY C. SWINFORD
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/s/ Lori A. Fleming
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