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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NOS. 46667-2019 & 46668-2019
Plaintiff-Respondent,)	
)	Ada County Case Nos.
v.)	CR-FE-2015-11237 &
)	CR-FE-2015-18090
ROXANN KAY CALHOON,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Calhoon failed show any basis for reversal of the district court's orders denying her Rule 35 motions for reduction of the sentences imposed upon her guilty pleas to one count of felony injury to a child and two counts of possessing methamphetamine?

Calhoon Has Failed To Establish Any Basis For Reversal Of The District Court's Order Denying Her Rule 35 Motions

After Calhoon pled guilty to possession of methamphetamine in docket number 46667 and to felony injury to a child and possession of methamphetamine in docket number 46668, the district court imposed an aggregate, unified sentence of seven years, with three years fixed, and

retained jurisdiction in both cases. (R., pp.41-42, 86-90, 196-98, 236-40.) After a period of retained jurisdiction, the district court suspended the sentences and placed Calhoon on probation for five years. (R., pp.95-100, 245-49.)

Less than one year later, the state moved in each case to revoke Calhoon's probation, alleging that Calhoon had violated the conditions of her probation by committing the crimes aggravated DUI, felony leaving the scene of an injury accident, and driving without privileges in Canyon County case number CR-2017-15178 (hereinafter "the Canyon County case"); consuming and/or possessing an alcoholic beverage; failing to stay on prescribed medications; failing to pay fines, fees, funds, surcharges, and/or costs as ordered by the court; and failing to pay restitution. (R., pp.103-05, 253-55.) Calhoon admitted to having violated the conditions of her probation by committing the new crimes in the Canyon County case, and the state dismissed the balance of the allegations. (R., pp.118-19, 266.) The district court revoked Calhoon's probation in both cases, executed her underlying sentences, and ordered the sentences to run concurrently with Calhoon's sentence in the Canyon County case. (R., pp.137-40, 284-87.) Calhoon filed timely Rule 35 motions for reduction of her sentences in both cases, which the district court ultimately denied.¹ (R., pp.141, 152-56, 288, 299-303.) Calhoon

¹ In her Rule 35 motions, filed on August 15, 2018, Calhoon requested "leave in order to supplement [her] motion[s] further with supporting documentation and/or evidence based on the fact that defense counsel in Canyon County [would] be pursuing an ICR 35 motion." (R., pp.141, 288.) The district court granted the request and gave Calhoon until September 12, 2018, to file additional supporting materials. (R., pp.142-43, 289-90.) On September 12, 2018, Calhoon and the state filed a stipulation to extend the time in which Calhoon's supporting materials were due by 45 days, and the district court granted that stipulation. (R., pp.144-46, 291-93.) Calhoon thereafter filed an addendum to her Rule 35 motions on October 24, 2018. (R., pp.147-48, 294-95.) Based upon this record, including the state's stipulation below, the state assumes for purposes of this appeal that the district court still had jurisdiction to rule on Calhoon's Rule 35 motions by the time it entered its order denying those motions in December 2018.

filed notices of appeal timely only from the district court's orders denying her Rule 35 motions. (R., pp.157-60, 304-07.)

On appeal, Calhoon argues that the district court abused its discretion by denying her Rule 35 motions. (Appellant's Brief, pp.2-4.) 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). Application of these principles to the facts of this cases shows Calhoon has failed to establish any basis for reversal of the district court's order denying her Rule 35 motions.

Calhoon did not appeal the judgment of conviction in this case. Nor did she support her Rule 35 motions with any new information or evidence to demonstrate her sentences were excessive. Rather, as Calhoon acknowledges on appeal, her requests for leniency in these cases were based solely "on the fact she had filed a Rule 35 motion a for [sic] sentence reduction in her Canyon County Case No. CR-2017-15178, which, if granted, would mean that she could complete her Canyon County fixed prison time before the time required by her original sentences in these cases." (Appellant's brief, p.4; compare R., pp.147-48, 294-95.) However, nothing about the filing of Calhoon's Rule 35 motion in the Canyon County case, which was still pending when the district court entered its orders denying Calhoon's Rule 35 motions in these

cases, demonstrated Calhoon's sentences in these cases were excessive. As found by the district court, "[t]he Canyon County motion [was] based on a request for leniency, but no further information was included in that motion." (R., pp.153, 300.) Moreover, as Calhoon concedes on appeal, "her request for reduction of sentence in her Canyon County case has since been denied." (Appellant's brief, p.4 (footnote omitted).) Because Calhoon failed to provide any new information to support her requests for leniency in these cases, she has failed to show any abuse of discretion in the denial of her Rule 35 motions.

Even if Calhoon's assertion below that the district judge in her Canyon County case was "leaning toward" reducing her sentence in that case (see R., pp.147, 294) was new information, such did not entitle her to any reduction of her sentences in these cases. As explained by the court in these cases:

Even if a shorter fixed sentence was ordered by the Canyon County judge on the new felony, it is not this Court's practice to reduce sentences the Defendant knew she faced if she violated the terms and conditions of probation in the Ada County cases. Defendant has been given numerous opportunities to comply with terms and conditions of probation. Her non-compliance requires imposition of her sentence which will allow her to receive additional treatment and programming as well as deter her from criminal activity in the future.

(R., pp.155, 302.) Regardless of the disposition of Calhoon's Canyon County case, the district court acted well within its discretion by declining to reward Calhoon, in the form of reducing her sentences, for having committed new crimes while she was on probation in these cases. Calhoon has failed to establish any basis for reversal of the district court's orders denying her Rule 35 motions for reduction of sentences.

Conclusion

The state respectfully requests this Court to affirm the district court's orders denying Calhoon's Rule 35 motions for reduction of her sentences.

DATED this 23rd day of July, 2019.

/s/ Lori A. Fleming
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Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of July, 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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