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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	Nos. 46682-2019 & 46683-2019
Plaintiff-Respondent,	)	
	)	Ada County Case Nos.
v.	)	CR01-17-40189 & CR01-18-13465
	)	
ABEL DANIEL HIDALGO-VIALPANDO,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Hidalgo-Vialpando failed show any basis for reversal of the district court's orders denying his Rule 35 motions for reduction of his sentences?

Hidalgo-Vialpando Has Failed To Establish Any Basis For Reversal Of The District Court's Orders Denying His Rule 35 Motions

Hidalgo-Vialpando pled guilty to burglary in docket number 46682, and to grand theft in docket number 46683, and the district court imposed concurrent unified sentences of 10 years, with five years fixed. (R., pp.59-62, 130-33.) Hidalgo-Vialpando filed a timely Rule 35 motion

for reduction of sentence in each case, which the district court denied. (R., pp.63-69, 134-43.) Hidalgo-Vialpando filed notices of appeal timely only from the district court's orders denying his Rule 35 motions. (R., pp.70-73, 144-47.)

“Mindful that he did not provide new information in support of his Rule 35 motions,” Hidalgo-Vialpando nevertheless asserts that the district court abused its discretion by denying his Rule 35 motions for reduction of sentence in light of his age, medical issues, drug abuse and willingness to participate in treatment, and prison overcrowding. (Appellant's brief, pp.2-4.) Hidalgo-Vialpando has failed to establish any basis for reversal of the district court's orders denying his Rule 35 motions.

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).

Hidalgo-Vialpando did not appeal the judgments of conviction in these cases. On appeal, he acknowledges that he provided no new or additional information in support of his Rule 35 motions for reduction of his sentences. (Appellant's brief, pp.1, 3.) Because Hidalgo-Vialpando presented no new evidence in support of his Rule 35 motions, he failed to demonstrate in the motions that his sentences were excessive. Having failed to make such a showing, he has failed

to establish any basis for reversal of the district court's orders denying his Rule 35 motions for reduction of sentence.

Conclusion

The state respectfully requests this Court to affirm the district court's orders denying Hidalgo-Vialpando's Rule 35 motions for reduction of sentence.

DATED this 22nd day of July, 2019.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd 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:

ELIZABETH ANN ALLRED  
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/s/ Lori A. Fleming  
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