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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47723-2020
Plaintiff-Respondent,)	
)	Bannock County Case No.
v.)	CR-2017-14530
)	
BRANDON HOOVER,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

Hoover pled guilty to possession of methamphetamine and the district court imposed a unified sentence of five years, with three years fixed, suspended the sentence, and placed Hoover on supervised probation for four years. (R., pp. 87-92.) Hoover subsequently violated the

conditions of his probation by failing to ever report for supervision, and the district court revoked his probation and executed the underlying sentence. (R., pp. 99-100, 112-15.) Hoover filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp. 116-17, 121-22.) Hoover filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp. 123-25.)

“Mindful that [he] did not submit new or additional information in support of his motion for leniency,” Hoover nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion because “[t]his was [his] first probation violation in this case, and he was in communication with his assigned probation officer just days before his probation officer filed the violation.” (Appellant's brief, pp. 3-4.) Hoover has failed to establish any basis for reversal of the district court's order denying his Rule 35 motion.

If a sentence is within statutory limits, a Rule 35 motion is merely a request for leniency, which is reviewed for an abuse of discretion. State v. Brunet, 155 Idaho 724, 729, 316 P.3d 640, 645 (2013) (citing State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)). A Rule 35 motion “does not function as an appeal of a sentence.” 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. at 729-30, 316 P.3d at 645-46; State v. Carter, 157 Idaho 900, 903, 341 P.3d 1269, 1272 (Ct. App. 2014).

On appeal, Hoover acknowledges that he provided no new or additional information in support of his Rule 35 motion for a reduction of sentence. (Appellant's brief, pp. 1, 3-4.) Because Hoover 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 reduction of sentence.

Conclusion

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

DATED this 21st day of May, 2020.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of May, 2020, 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/ Kenneth K. Jorgensen
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