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State v. Blair Appellant's Brief Dckt. 39087

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) NO. 39087
)
 v.)
)
 CHRISTOPHER EDWARD BLAIR,) APPELLANT'S BRIEF
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF APPELLANT

COPY

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CASSIA**

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District Judge

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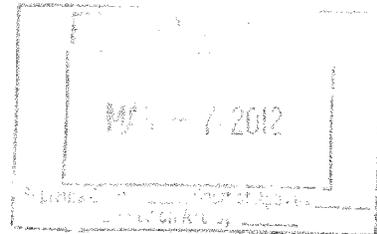


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STATEMENT OF THE CASE

Nature of the Case

Christopher Edward Blair appeals from the Order Denying The Defendant's Motion To Correct An Illegal Sentence. He asserts that the district court erred in denying his motion.

Statement of the Facts and Course of Proceedings

The prosecutor charged Mr. Blair, by Information, with vehicular manslaughter, leaving the scene of an injury accident, possession of a controlled substance, possession of drug paraphernalia with the intent to use, and driving under the influence. (R.38204, pp.43-46.)¹ At issue in this appeal is Count I, the vehicular manslaughter charge; the Information provided:

That the defendant, CHRISTOPHER EDWARD BLAIR, on or about the 11th day of March, 2010 in the County of Cassia, State of Idaho, did feloniously and unlawfully commit the crime of Vehicular Manslaughter by driving a motor vehicle, and where the operation of the motor vehicle was a significant cause contributing to the death of a human being because of the commission of an unlawful act, not amounting to a felony, with gross negligence, or because of the commission of a violation of Idaho Code Section 18-8004 or 18-8006, to-wit: the Defendant was driving a 1997 jeep Wrangler on or near Rock Creed [sic] Road at excessive speeds for the conditions while under the influence of alcohol and marijuana and was unable to maintain control of the vehicle which left the roadway and rolled, causing the death of Kristy Staley, a passenger in the vehicle. All in violation of Idaho Code §§ 18-4006(3)(a) and 18-4006(3)(b), a felony.

(R. 38204, pp.43-44.)

¹ The Idaho Supreme Court issued an Order Taking Judicial Notice of Supreme Court Docket No. 38204 and authorized the court clerk to prepare a limited clerk's record for the instant appeal. Any citation to the record contained in 38204 will reference the docket number and any citation to the instant appeal will be cited as "R." All of the transcripts were filed in 38204 and, therefore any citation to the transcript will be simply cited to as "Tr."

Mr. Blair agreed to plead guilty to this charge. (R. 38204, p.81.) In exchange for his guilty plea, the State agreed to recommend a unified sentence of thirteen years, with five years fixed.² (R. 38204, pp.81-83.) At the change of plea hearing, the district court asked Mr. Blair if he intended to plead guilty to Count I of the Information, to which he answered in the positive. (Tr.07/22/2010, p.10, Ls.16-21.) Count I of the Information accused Mr. Blair of committing vehicular manslaughter in violation of I.C. §§ 18-4006(3)(a) and § 18-4006(3)(b). (R. 38204, p.81.)

The district court advised Mr. Blair that the maximum punishment for Count I was fifteen years. (Tr.07/22/2010, p.12, Ls.17-20.) When confusion about the fine occurred (because the maximum for 18-4006(3)(a) had been used), the district court inquired if Mr. Blair was pleading guilty to 18-4006(3)(b), to which the prosecutor answered in the affirmative. (Tr.07/22/2010, p.13, Ls.7-9.) The court corrected the maximum fine amount on the written plea agreement. (Tr.07/22/2010, p.13, Ls.11-20; R., p.83.) Mr. Blair admitted to the factual basis to support his plea and stated he was guilty of vehicular manslaughter. (Tr.07/22/2010, p.22, L.13-p.24, L.8.)

The district court imposed concurrent sentences of fifteen years, with eight years fixed for vehicular manslaughter. (Tr.09/13/2010, p.59, Ls.9-11; R.38204, pp.92-96.) The district court did not specify what subsection of vehicular manslaughter the court was utilizing when imposing sentence. (*See generally* Sentencing Transcript.) The district court filed the Judgment of Conviction and Commitment, reflecting that Mr. Blair

² A conflict about whether the district court was bound by the sentencing recommendation exists between the Guilty Advisory Form and the Written Plea Agreement. (*Compare* R., p.82 *with* p.75.) At the change of plea hearing, the district court inquired of Mr. Blair if he understood that the court was not bound by the agreement and he indicated that he understood. (Tr.07/22/2010, p.11, Ls.16-23, p.17, Ls.10-13.) However, the district court did not note the discrepancy in the two documents.

had plead guilty to the offense charged in the Information, “Vehicular Manslaughter, a violation of Idaho Code §§ 18-4006(3)(a) and 18-4006(3)(b)[.]” (R. 38204, pp.92-96.)

Mr. Blair filed a timely notice of appeal of the Judgment of Conviction. (R. 38204, pp.102-105.) He also filed a timely Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion requesting the court’s leniency in reducing his sentence. (R., pp.20-21.) The district court denied Mr. Blair’s motion. (R., pp.42-48.) The Idaho Court of Appeals affirmed the Judgment of Conviction in an unpublished opinion. *See State v. Blair*, Docket No. 38204, 2011 Unpublished No. 613 (September 9, 2011).

The day after Mr. Blair filed his motion for leniency, the district court *sua sponte* filed an Amended Judgment of Conviction and Order. (R., pp.24-28.) The court titled the document “Amended to correct citations to the Idaho Code.” (R., p.24.) The court explained it made the amendment pursuant to Idaho Criminal Rule 36 (*hereinafter*, Rule 36) due to a clerical mistake. (R., p.24.) It thereafter deleted any reference to IC. § 18-4006 (3)(a). (R., pp.24-28.)

Mr. Blair filed a Petition For a Writ Of Habeas Corpus; or Motion To Correct An Illegal Sentence (Rule 35).³ (R., pp.73-101.) Only the motion to correct an illegal sentence is at issue in this appeal. (R., pp.112-115.) Mr. Blair asserted that he plead guilty to I.C. § 18-4006 (3)(a) and received a sentence not authorized by law. (R., pp.75-82.) He also alleged that the district court improperly amended the Judgment of Conviction claiming a clerical error occurred. (R., pp.18.) Mr. Blair asserted that removing any mention of 18-4006 (3)(a) from the judgment of conviction substantively changed his guilty plea and, therefore, Due Process dictated that he should have been present for the amendment. (R., pp.90-91.)

The district court denied Mr. Blair's motion for correction of an illegal sentence. (R., pp.102-109.) The district court found that based upon the record, Mr. Blair plead guilty to I.C. § 18-4006(3)(b). (R., pp.105-106.) Moreover, he was advised of the possible penalties for I.C. § 18-4006(3)(b) and knew the state would be seeking punishment allowable under I.C. § 18-4006(3)(b). (R., pp.105-06.) The State could not make its intended recommendation under I.C. § 18-4006(3)(a). (R., pp.105-06.) Finally the district court concluded, "Under the facts charged in the Information, and pursuant to every relevant document in the file, the Defendant pled guilty to Vehicular Manslaughter under I.C. § 18-4006(3)(b). (R., p.106.) Therefore, the district court held that Mr. Blair was not entitled to relief because his sentence was legal. (R., p.106.)

³ The district court opened a separate case for the Petition For A Writ Of Habeas Corpus (CV 2011-701) and issues relating to the writ are not on appeal at this time.

ISSUE

Did the district court impose an illegal sentence and, therefore, this Court should vacate the judgment of conviction and remand the matter for a new sentencing hearing?

ARGUMENT

The District Court Imposed An Illegal Sentence And, Therefore, This Court Should Vacate The Judgment Of Conviction And Remand The Matter For A New Sentencing Hearing

Idaho Criminal Rule 35 provides, in part, “The court may correct a sentence that is illegal from the face of the record at any time.” The Idaho Supreme Court has recently held:

[T]he term “illegal sentence” under Rule 35 is narrowly interpreted as a sentence that is illegal from the face of the record, i.e., does not involve significant questions of fact or require an evidentiary hearing. This interpretation is harmonious with current Idaho law. As this Court recently noted in *State v. Farwell*, 144 Idaho 732, 735, 170 P.3d 397, 400 (2007), Rule 35 is a “narrow rule.” Because an illegal sentence may be corrected at any time, the authority conferred by Rule 35 should be limited to uphold the finality of judgments. Rule 35 is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal; rather, the rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law or where new evidence tends to show that the original sentence was excessive. See *State v. Arthur*, 145 Idaho 219, 223, 177 P.3d 966, 970 (2008).

State v. Clements, 148 Idaho 82, 86 (2009).

Here, Mr. Blair contends that his sentence is illegal because the district court lacked jurisdiction to amend the Judgment of Conviction. Idaho Criminal Rule 36 authorizes courts to correct clerical mistakes in judgments or orders; it does not provide authority for the amendment of the September 14, 2010 judgment in this case. Because the district court lacked jurisdiction to amend the Judgment of Conviction via Rule 36, Mr. Blair needed to be brought back in for a new sentencing hearing to correct the illegality of the sentence imposed for I.C. § 18-4006(3)(a).

Under Idaho law, the only legally cognizable sentence in a criminal case is the “actual oral pronouncement in the presence of the defendant.” *State v. Wallace*, 116 Idaho 930, 932 (Ct. App. 1989), quoting *United States v. Bergmann*, 836 F.2d 1220,

1221 (9th Cir. 1988). Idaho Criminal Rule 36 which allows corrections of clerical mistakes does not apply to judicial or legal errors. *State v. Allen*, 144 Idaho 875, 878 (Ct. App. 2007). A clerical error in typing a written judgment that directly conflicts with an orally pronounced sentence can be corrected by the trial court at any time under Rule 36. *Id.* Recently the Court of Appeals held:

The court's intent must be expressed on the record in the first instance before a later-filed document having content inconsistent with that intent can be corrected as a clerical error or mistake under the rules. This judicially-imposed limitation exists to ensure that a trial court does not use either rule as a vehicle to simply change its mind and exercise its discretion differently from the way it was exercised in the original determination. In the context of criminal sentencing specifically, this Court has stated that I.C.R. 36 "does not provide a vehicle by which a trial court may amend a sentence to give effect to the court's previously unstated intent that alters the sentence."

State v. Moore, ___ Idaho ___, 268 P.3d 471, 473 (Ct. App. 2011), rev. denied (Feb. 16, 2012) (citations omitted).

In this case, the District Court clearly stated that it was sentencing Mr. Blair to the charge in the Information. (Tr.09/13/2010, p.59, Ls.9-11.) The charge in the Information was both I.C. §§ 18-4006(3)(a) and 18-4006(3)(b). (R.38204, pp.43-44.) Additionally, the written plea agreement provided that Mr. Blair was pleading guilty to both I.C. §§ 18-4006(3)(a) and 18-4006(3)(b). (R.38204, p.81.) Any imposition of the fifteen year sentence to I.C. § 18-4006(3)(a) was a judicial error, not a clerical error. Therefore, the Court lacked jurisdiction to enter its amended judgment without having Mr. Blair present for correcting the illegal sentence. Given the lack of jurisdiction, the November 16, 2010 amended judgment must be vacated and the matter remanded for a new sentencing hearing.

CONCLUSION

Mr. Blair respectfully requests that this Court vacate the Amended Judgment of Conviction, and remand the matter to the district court for a new sentencing hearing.

DATED this 7th day of March, 2012.

DIANE M. WALKER
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of March, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

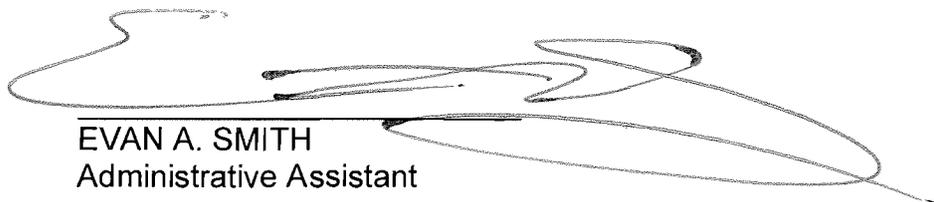
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