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State v. Sparks Respondent's Brief Dckt. 41979

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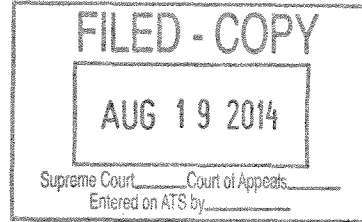
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 41979
Plaintiff-Respondent,)	
)	Bannock Co. Case No.
v.)	CR-2011-6912-FE
)	
MICHAEL L. SPARKS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Sparks failed to establish error in the district court's denial of his I.C.R. 35 motion for correction of his sentence?

Sparks Has Failed To Establish Error In The District Court's Denial Of His I.C.R. 35 Motion

According to the Idaho Court of Appeals' opinion in State v. Sparks, Docket No. 40844, 2014 Unpublished Op. No. 358, *1 (Feb. 7, 2014):

Pursuant to a plea agreement, Michael L. Sparks plead [sic] guilty to murder in the second degree. Idaho Code §§ 18-4001, 18-4002, 18-4003(g). As part of the plea agreement, the parties stipulated to a

determinate term of twenty years, with the indeterminate term open for argument. The district court sentenced Sparks to a unified term of life, with twenty years determinate.

(R., p.23.)

Sparks filed a Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.17-18, 21-22.) Sparks appealed his sentence, contending the indeterminate portion is excessive, and the Idaho Court of Appeals affirmed his sentence. (R., p.23.) Sparks filed a Rule 35 motion to correct an illegal sentence, claiming the district court was required to sentence him to the mandatory fixed minimum sentence for second degree murder -- 10 years -- and no more. (R., pp.24-30.) The district court denied Sparks' motion, explaining, in essence, that I.C. § 18-4004 establishes a minimum 10-year fixed sentence -- not a maximum fixed sentence. (R., pp.31-34.) Sparks filed a timely notice of appeal. (R., pp.35-38.)

On appeal, Sparks asserts the same arguments he raised in his Rule 35 motion. (Compare R., pp.24-30 with Opening Brief of Appellant ("Appellant's Brief").) Thus, Sparks contends that because I.C. § 18-4004 requires a 10-year minimum sentence for second degree murder, that is the only period of time the court was authorized to "fix" as a matter of law. (Appellant's Brief, pp.4-5.)

Transposing this Court's analysis in its recent unpublished decision in State v. Nicolai, Docket No. 41566, 2014 Unpublished Op. No. 509, *3-4 (May 16, 2014), upon Sparks' case, it can be similarly stated:

[Sparks'] argument is utterly without merit. Idaho Code §§ 18-107 and 19-2513 grant trial courts discretion in imposing the fixed and indeterminate portions of a sentence. Section 18-107 specifies:

Whenever, in this code, the punishment for a crime is left undetermined between certain limits, the punishment to

be inflicted in a particular case, must be determined by the court authorized to pass sentence within such limits as may be prescribed by this code.

Section 19-2513 states in part:

The court shall specify a minimum period of confinement and may specify a subsequent indeterminate period of custody. The court shall set forth in its judgment and sentence the minimum period of confinement and the subsequent indeterminate period, if any, provided, that the aggregate sentence shall not exceed the maximum provided by law. During a minimum term of confinement, the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct except for meritorious service except as provided in section 20-223(f), Idaho Code. The offender may be considered for parole or discharge at any time during the indeterminate period of the sentence and as provided in section 20-223(f), Idaho Code.

The limits for a sentence for [second degree murder] are set by I.C. § 18-4004, which states that "[murder of second degree is punishable by imprisonment not less than ten (10) years and the imprisonment may extend to life.]" Thus, Section [18-4004] set the outer limits of the permissible sentence for [second degree murder] ([ten] year[s] to life), Section 18-107 gave the court authority to impose a sentence anywhere within those outer limits, and Section 19-2513 conferred discretion to determine what portion (or all) of the sentence would be determinate or indeterminate. Consistent with that discretion, the district court may impose a [20-year] sentence for the offense of [second degree murder]. [Citation omitted.] Accordingly, a fixed [20-year] sentence for [second degree murder] is not illegal.

In short, Sparks' claim fails because trial courts have discretion to "impose sentences within the maximum limits set by statute." Cook v. State, 145 Idaho 482, 488, 180 P.3d 521, 527 (Ct. App. 2008). Where "the offense carries a mandatory minimum penalty as provided by statute, the court shall specify a minimum period of confinement consistent with the statute." I.C. § 19-2513. The minimum period of confinement for second degree murder is "imprisonment **not less than ten (10)**" years. I.C. § 18-4004 (emphasis added). Sparks' argument that the plain language of the

statute supports his claim that the mandatory minimum, *i.e.*, the fixed term, can *only* be ten years, is incorrect. Rather, the minimum term is "**not less than ten (10)**" years "and the imprisonment may extend to life." I.C. § 18-4004. (Emphasis added.) Therefore, Sparks' sentence of 20 years fixed to life was not illegal, and he has failed to show error in the denial of his Rule 35 motion to correct an illegal sentence.

Conclusion

The state respectfully requests this Court affirm the district court's order denying Sparks' Rule 35 motion.

DATED this 19th day of August, 2014.



JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of August, 2014, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BEN PATRICK MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.


John C. McKinney
Deputy Attorney General

JCM/pm