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State v. Suttle Respondent's Brief Dckt. 42247

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 42247
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-2009-4482
)	
PATRICK EARL SUTTLE,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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Supreme Court Court of Appeals
Entered on ATS by *BSS*

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STATEMENT OF THE CASE

Nature of the Case

Patrick Earl Suttle appeals from the district court's order denying his I.C.R. 35(a) motion to correct an illegal sentence.

Statement of Facts and Course of Proceedings

In 2009, following an argument, Suttle struck Michelle Ahmuty, his girlfriend, in her face and head. (#40689¹ PSI, pp.1, 95-96, 102-103.) Suttle also burned Ahmuty's arm with a lit cigarette. (Id.) Suttle then attempted to strangle Ahmuty with his hands. (#40689 PSI, pp.1, 95.) Following the attack, Suttle held Ahmuty in her residence against her will for several hours. (#40689 PSI, pp.1, 95-96.) Before Suttle finally left the residence, he stole Ahmuty's cell phone and told her that his friends would harm her if she "had him arrested." (#40689 PSI, pp.1, 95-96, 102-103.) Responding officers observed that Ahmuty had a swollen face, a bruise forming under her left eye, marks on her neck, and a cigarette burn on her arm. (Id.)

The state charged Suttle with attempted strangulation, intimidation of a witness, false imprisonment, two counts of misdemeanor battery, and petit theft. (#40689 R., pp.33-35.) Pursuant to plea agreement, Suttle pled guilty to attempted strangulation and one count of misdemeanor battery. (#40689 R., pp.64-68.) The state agreed to dismiss the remaining charges. (#40689 R.,

¹ The Idaho Supreme Court took judicial notice of the clerk's record, reporter's transcripts, and exhibits (including confidential exhibits), associated with Suttle's direct appeal from the underlying conviction, Docket No. 40689. (8/7/14 Order.) Citations to the PSI from Docket No. 40689 are to the electronic file "SuttlePSI."

p.42.) The district court imposed a unified 10-year sentence with three years fixed for attempted strangulation, but suspended the sentence and placed Suttle on probation for 10 years. (#40689 R., pp.64-68.) The district court imposed a concurrent jail sentence for misdemeanor battery. (Id.) In 2013, after multiple probation violations, the district court revoked Suttle's probation and ordered the original sentence executed. (#40689 R., pp.151-153.) The Idaho Court of Appeals affirmed the district court's revocation of probation and imposition of sentence. State v. Suttle, 2013 Unpublished Opinion No. 806, Docket No. 40689 (Idaho App., December 31, 2013).

In 2015, Suttle filed a *pro se* I.C.R. 35(a) motion to correct an illegal sentence. (R., pp.27-30.) Suttle, citing State v Moffat, 154 Idaho 529, 300 P.3d 61 (2013), asserted that the district court violated his double jeopardy rights by punishing him twice for a single offense. (Id.) The district court denied the motion, concluding: (1) Suttle failed to demonstrate a double jeopardy violation from the face of the record; and (2) I.C.R. 35(a) did not permit it to "revisit the factual basis underlying the offense" to determine whether Suttle was punished twice for the same conduct. (R., pp.31-36.) Suttle timely appealed. (R., pp.45-48.)

ISSUE

Suttle states the issue on appeal as:

Whether Mr. Suttle's convictions and sentences for attempted strangulation and misdemeanor battery are illegal because they violate constitutional prohibitions against double jeopardy?

(Appellant's brief, p.4.)

The state rephrases the issue on appeal as:

Has Suttle failed to show that the district court erred in denying his I.C.R. 35(a) motion to correct an illegal sentence?

ARGUMENT

Suttle Has Failed To Show That The District Court Erred In Denying His I.C.R. 35(a) Motion To Correct An Illegal Sentence

A. Introduction

Suttle contends that the district court erred by denying his I.C.R. 35(a) motion to correct an illegal sentence. (See generally Appellant's brief.) Specifically, Suttle contends that his sentences and convictions were illegal because they constituted two punishments for the same offense in violation of constitutional double jeopardy provisions. (Id.) Suttle's contention fails because he cannot demonstrate a double jeopardy violation from the face of the record, and because I.C.R. 35(a) did not permit the district court to revisit the factual basis underlying the offense to determine whether Suttle was punished twice for the same conduct.

B. Standard Of Review

Whether a sentence is illegal is a question of law that is freely reviewed by the court on appeal. State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009).

C. The District Court Properly Denied Suttle's I.C.R. 35 Motion To Correct An Illegal Sentence

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. This clause protects a defendant against multiple criminal punishments for the same offense. Schiro

v. Farley, 510 U.S. 222, 229 (1994); State v. McKeeth, 136 Idaho 619, 622, 38 P.3d 1275, 1278 (Ct. App. 2001).

Idaho Criminal Rule 35(a) allows the trial court to correct a sentence that is “illegal from the face of the record at any time.” Therefore, a double jeopardy claim asserting that a court imposed multiple punishments for the same offense may be raised in an I.C.R. 35(a) motion when the double jeopardy violation is apparent from “the face of the record.” State v. McKinney, 153 Idaho 837, 841, 291 P.3d 1036, 1040 (2013).

However, it does not follow that *any* double jeopardy claim may be raised in an I.C.R. 35(a) motion. Where a double jeopardy challenge raised pursuant to I.C.R. 35(a) requires a district court to revisit the factual basis underlying the offense, relief is precluded by the language of I.C.R. 35(a). In Clements, 148 Idaho at 84-87, 218 P.3d at 1145-1148, the Idaho Supreme Court explained:

Therefore, the 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).

In this case, as the district court correctly concluded, no double jeopardy violation is apparent from the face of the record. While misdemeanor battery is

a lesser included offense of attempted strangulation (and thus the “same offense” for double jeopardy purposes, see Moffat 154 Idaho at 530-533, 300 P.3d at 62-65), the charging information in this case reflects that the state charged Suttle with the two offenses for committing two *different* violent acts against Ahmuty. Suttle pled guilty to the following counts from the charging information:

COUNT I

That the Defendant, PATRICK E. SUTTLE, on or about the 10th day of March, 2009, in the County of Ada, State of Idaho, did willfully and unlawfully choke or attempt to strangle the person of Michelle Ahmuty, to-wit: by putting his hands around Michelle Ahmuty's neck and squeezing, and where Michelle Ahmuty and the Defendant are household members or have or had a dating relationship.

COUNT IV

That the Defendant, PATRICK E. SUTTLE, on or about the 10th day of March, 2009, in the County of Ada, State of Idaho, did unlawfully and intentionally cause bodily harm, to-wit: by causing bruising on Michelle Ahmuty's arms, face, and contusions to Michelle Ahmuty's head.

(#40689 R., pp.33-35, 64-68.)

On appeal, Suttle cites Moffat, 154 Idaho at 532-533, 300 P.3d at 64-65, for the general proposition that “[w]hen a person commits multiple acts against the same victim during a single criminal episode and each act could independently support a conviction for the same offense, for double jeopardy purposes, the ‘offense’ is typically the episode, not each individual act.” (Appellant’s brief, p.13.) However, whether multiple acts constitute a “single criminal episode” is a question of fact beyond the scope of I.C.R. 35(a).

In State v. Moad, 156 Idaho 654, 659, 330 P.3d 400, 405 (Ct. App 2014), Moad asserted, on direct appeal, that his convictions for male rape and battery with intent to commit a serious felony violated constitutional double jeopardy provisions because the “acts occurred as parts of an indivisible course of conduct and thus constitute a single criminal offense.” In affirming Moad’s conviction, the Idaho Court of Appeals recognized the general holding of Moffat regarding double jeopardy and “single criminal episodes,” but also noted:

However, the double jeopardy prohibition is not violated if the charges are for distinct crimes rather than inseparable parts of a single criminal episode. Therefore, if it appears that the double jeopardy bar may be implicated, *the court must make a factual inquiry as to whether the crimes were parts of one continuing event or transaction.*

Id. (emphasis added).

Similarly, in this case, a determination of whether Suttle’s attacks on his girlfriend constituted a “single criminal episode” for double jeopardy purposes would require a factual inquiry. In fact, on appeal, Suttle cites to a police report attached to the PSI to support his argument that the attack constituted one indivisible course of contact. (Appellant’s brief, pp.13-14 (citing #40689 PSI, pp.2, 95).) While Moad and Moffat were permitted to make such arguments on direct appeal, this is the type of “reexam[ination] [of] the facts underlying the case” that is beyond the scope of I.C.R. 35(a). Clements, 148 Idaho at 84-87, 218 P.3d at 1145-1148.

Suttle has failed to demonstrate a double jeopardy violation from the face of the record. This Court should therefore affirm the district court's denial of Suttle's I.C.R. 35(a) motion to correct an illegal sentence.²

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Suttle's I.C.R. 35(a) motion to correct an illegal sentence.

DATED this 15th day of April, 2015.


MARK W. OLSON
Deputy Attorney General

² Further, even assuming that it was apparent from the face of the record that the district court's sentence violated constitutional double jeopardy provisions, Suttle would not be entitled to his requested relief (Appellant's brief, p.14), that this Court vacate his felony attempted strangulation conviction. Instead, where a defendant is convicted of both a greater offense and a lesser included offense for the same criminal conduct, the lesser included offense is merged into the greater offense. See State v. Eby, 136 Idaho 534, 540, 37 P.3d 625, 631 (Ct. App. 2001); Sivak v. State, 112 Idaho 197, 210-211, 731 P.2d 192, 205-206 (1986); State v. Pizzuto, 119 Idaho 742, 756-758, 810 P.2d 680, 694-696 (1991), overruled on other grounds by State v. Card, 121 Idaho 425, 432, 825 P.2d 1081, 1088 (1991).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of April, 2015, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SALLY J. COOLEY
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.



MARK W. OLSON
Deputy Attorney General

MWO/pm