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State v. Lawrence Appellant's Brief Dckt. 43462

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43462
Plaintiff-Respondent,)	
)	BONNEVILLE COUNTY NO. CR 2013-15791
v.)	
)	
ROBERT A. LAWRENCE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Robert A. Lawrence appeals from the district court's order denying his motion to correct an illegal sentence. Mindful of the language of the plea agreement and the relevant statutes, Mr. Lawrence asserts that the district court erred by denying his motion.

Statement of the Facts & Course of Proceedings

The Rule 35 motion in this case stems from Supreme Court docket numbers 42211 42212, and 42423, which were the prior appeals of Mr. Lawrence's convictions

and sentences.¹ Supreme Court Docket No. 42211 (Bonneville County district court case number 2013-16227 (*hereinafter*, 42211)), Supreme Court Docket No. 42212 (Bonneville County district court case number 2013-15791 (*hereinafter*, 42212)), and Supreme Court Docket No. 42423 (Bonneville County district court case number 2013-15787 (*hereinafter*, 42423)), were consolidated for appellate purposes. (R., No. 42211, pp.97-98.)

In 42211, Mr. Lawrence was alleged to have broken into a home and a veterinary clinic and stolen some items. (R., pp.8-10, 17, 29-30.) Mr. Lawrence was charged by Information with two counts of burglary. (R., pp.29-30.) Mr. Lawrence pled guilty to both counts of burglary pursuant to a plea agreement. (12/16/13 Tr., p.18, L.24 – p.20, L.8; R., pp.38-42.)

In 42212, during the commission of a home invasion burglary, Mr. Lawrence was surprised to discover that the homeowner was in the house. (Presentencing Investigation Report (*hereinafter*, PSI), p.7.) Mr. Lawrence was charged by Information with one count of robbery, one count of kidnapping, and one count of burglary. (R., pp.143-144.) Mr. Lawrence pled guilty to all three counts pursuant to a plea agreement. (12/16/13 Tr., p.13, L.11 – p.16, L.15; R., pp.152-156.)

In 42423, Mr. Lawrence's father noticed some guns in his son's room and contacted the police as he did not believe the guns belonged to his son. (R., pp.209-210.) Mr. Lawrence was charged by Information with grand theft by possession of

¹ This Court has augmented this appeal with the transcripts and records of Mr. Lawrence's prior appeal. (See Order Augmenting Appeal, filed 8/21/15.)

stolen property. (R., pp.242-243.) Pursuant to a plea agreement, Mr. Lawrence agreed to plead guilty as charged. (12/16/13 Tr., p.17, Ls.6-9; R., pp.250-254.)

In each case, pursuant to the plea agreement, the State agreed not to file any new or additional charges, to recommend that the sentences in all three cases be concurrent, and to refrain from recommend greater than five years fixed for each count; however, it was free to argue for any indeterminate term. (12/16/13 Tr. p.5, Ls.1-11; R. pp.38-42, 152-156, 250-254.) The district court accepted the pleas and set the cases for sentencing. (12/16/13 Tr., p.21, Ls.5-7.) At the request of defense counsel, the district court also ordered a psychological evaluation pursuant to I.C. § 19-2522. (12/16/13 Tr., p.21, Ls.14-24; R., pp.44-46, 159-161, 257-259.)

At the sentencing hearing, the State asked the district court to sentence Mr. Lawrence to an aggregate unified sentence of life, with five years fixed. (1/27/14 Tr., p.20, Ls.20-25, p.22, L.24 – p.23, L.16.) Mr. Lawrence asked the district court to sentence him to an aggregate unified sentence of one and a half to two years fixed, with eight years indeterminate. (1/27/14 Tr., p.36, L.21 – p.37, L.2, Ls.20-23.) The district court ultimately sentenced Mr. Lawrence to an aggregate unified sentence of thirty-five years, with eight years fixed and ordered the sentences to be served concurrently. (1/27/14 Tr., p.51, L.20 – p.52, L.22; R., pp.95-97, 169-172, 264-266.)

On February 21, 2014, Mr. Lawrence filed a timely Rule 35 motion in all three cases asking the district court to reconsider the sentence it imposed. (R., pp.68-69, 175-176, 267-268.) On April 21, 2014, the district court held a hearing on Mr. Lawrence's Rule 35 motions, but denied the motions for leniency. (See 4/21/14 Tr.; R., pp.78, 183, 275.) Thereafter, on May 28, 2014, Mr. Lawrence filed Notices of

Appeal in all three cases which were timely from the orders denying his Rule 35 motions. (R., pp.81-85, 90-94, 186-190, 195-199, 278-282.) Mr. Lawrence appealed, and the Court of Appeals affirmed. See *State v. Lawrence*, 2015 Unpublished Opinion No. 544 (Ct. App. July 9, 2015.)

Mr. Lawrence filed a Rule 35 motion for correction of an illegal sentence. (R., No. 43462, p.28.) He asserted that his sentences were illegal because they violated the plea agreement; specifically, he asserted that once the court accepted the plea agreement, it was bound by the agreement which stated that the State would not argue, and Mr. Lawrence would not be sentenced, for more than five years determinate on each count, to be served concurrently. (R., No. 43462, p.29.) Mr. Lawrence asserted that the court did not follow the plea agreement because it imposed a sentence of eight years determinate. (R., No. 43462, pp.29-30.)

Mr. Lawrence also asserted that his fixed terms for robbery and kidnapping violated the statutory limits. (R., No. 43462, p.31.) Specifically, Mr. Lawrence asserted that kidnapping carried a mandatory minimum of one year, and robbery carried a mandatory minimum of five years, and that pursuant to I.C. § 19-2513, which states, “if the offense carries a mandatory minimum penalty as provided by statute, the Court shall specify a mandatory minimum period of confinement that is consistent with such statute,” the court was obligated to only impose the mandatory minimum of fixed time. (R., No. 43462, pp.31-32.)

The State objected to the motion, asserting that the sentence was legal and that the plea agreement was non-binding. (R., No. 43462, p.43.) The district court denied the motion based on the language of the plea agreement. (7/21/15 Tr., p.9, Ls.1-9.)

Mr. Lawrence appealed. (R., No. 43462, p.59.) Mindful of the language of the plea agreement and of I.C. § 19-2513, Mr. Lawrence asserts that the district court erred by denying his motion.

ISSUE

Did the district court err by denying Mr. Lawrence's Rule 35 motion to correct an illegal sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Lawrence's Rule 35 Motion To Correct An Illegal Sentence

Pursuant to Idaho Criminal Rule 35(a), a district court may correct an illegal sentence at any time. *State v. Huffman*, 144 Idaho 201, 203 (2007). Whether a sentence is illegal is a question of law over which this Court exercises free review. *State v. Farwell*, 144 Idaho 732, 735 (2007). In *State v. Clements*, 148 Idaho 82 (2009), the Idaho Supreme Court held that the term "illegal sentence" under Rule 35(a) 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. *Clements*, 148 Idaho at 87. The rule is limited to legal questions surrounding the defendant's sentence and any factual issues must be apparent from the face of the record. *Id.* at 88.

With regard to the claim that Mr. Lawrence's sentences violate the plea agreement, Mr. Lawrence acknowledges the language of the plea agreement. The plea agreement sets forth the charges to which Mr. Lawrence agreed to plead guilty, and then stated that the State would not file any additional charges and that,

Each party is free to argue regarding sentencing except that the State shall recommend that each count run concurrent with each other, and the

[sic] shall recommend incarceration with Idaho Department of Corrections with no more than five (5) years determinate on each count, but is free to argue the indeterminate sentence, on each count.

(R., p.38.) The agreement then states, “this agreement is not binding on the Court.”

(R., p.38.) This is followed by, “this agreement is made pursuant to I.C.R. 11(f)(1)(B) and is not intended to be binding unless accepted by the Court. If the Court rejects this plea agreement, the defendant acknowledges that he nevertheless has no right to withdraw his plea.” (R., p.38.)

Mr. Lawrence acknowledges that the plea agreement only binds the State to recommend concurrent five year determinate sentences, and that the agreement states that is not binding on the court “unless accepted” by the Court. Because the agreement states “this agreement is made pursuant to I.C.R. 11(f)(1)(B) and is not intended to be binding unless accepted by the Court,” and the court accepted the plea agreement, Mr. Lawrence asserts that his sentences are illegal.

With regard to the claim that the sentences for kidnapping and robbery exceed the statutory limit, Mr. Lawrence acknowledges that the Court of Appeals has already rejected this argument. See *State v. Griffith*, 157 Idaho 409 (Ct. App. 2014.) In *Griffith*, the Court summarized the argument as follows:

Griffith argues that Idaho Code § 19–2513 limits the discretion of the sentencing court when a crime carries a mandatory fixed term. He relies upon the portion of I.C. § 19–2513 that states: “If the offense carries a mandatory minimum penalty as provided by statute, the court shall specify a minimum period of confinement consistent with such statute.” Griffith argues that we should interpret this language to mean that the court may impose any indeterminate sentence otherwise authorized, but the fixed portion of the sentence may not exceed the minimum sentence stated in Section 18–4004. Because I.C. § 18–4004 authorizes “a minimum period of confinement of not less than ten (10) years,” Griffith contends that his fixed term may not be more than ten years.

Id. at 410. The Court rejected the argument, stating,

Griffith's argument distorts the meaning of the statute. In substance, he contends that the ten-year *minimum* fixed sentence authorized by the statute is instead a ten-year *maximum* fixed term. The statute actually authorizes for first degree murder a unified sentence of life with a fixed term of any duration between ten years and life. Section 19-2513 authorizes the court, in its discretion, to distribute that sentence between a determinate (fixed) term and an indeterminate term within those parameters. Therefore, Griffith's sentence for first degree murder is consistent with I.C. § 18-4004, as required by I.C. § 19-2513.

Id. Therefore, mindful of *Griffith* and the language of I.C. § 19-2513, Mr. Lawrence asserts that the district court erred by denying his motion because his fixed terms for robbery and kidnapping exceed the statutory maximum.

CONCLUSION

Mr. Lawrence respectfully requests that the district court's order denying his motion to correct an illegal sentence be vacated and his case remanded for further proceedings.

DATED this 7th day of June, 2016.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of June, 2016, 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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INMATE #110437
ISCI
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DANE H WATKINS JR
DISTRICT COURT JUDGE
E-MAILED BRIEF

TRENT GRANT
BONNEVILLE COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas