

8-3-2016

## State v. Navarrete Respondent's Brief 1 Dckt. 43758

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43758
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2009-19811
	)	
CARLOS MALVIN NAVARRETE,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Is this Court without jurisdiction to consider Navarrete's challenge to the district court's order denying his Rule 35 motion for correction of an illegal sentence because Navarrete did not file his notice of appeal within 42 days of the entry of that order?

Navarrete's Appeal Should Be Dismissed Because It Is Untimely From The Only Order He Challenges

In 2010, a jury found Navarrete guilty of second degree murder, with a firearm enhancement, and the district court imposed a unified sentence of life, with 30 years fixed. (R., p.17.) Approximately four years after judgment, on June 4, 2014, Navarrete

filed a Rule 35 motion for correction of an illegal sentence, arguing that his sentence was illegal because, he claimed, I.C. § 19-2513 required the court to impose only the mandatory minimum sentence of 10 years for his second degree murder conviction. (R., pp.10-16.) The district court denied the motion on July 3, 2014, correctly concluding that Navarrete's sentence was not illegal because I.C. § 19-2513 "in conjunction with Idaho Code § 18-4001 only limited the court's discretion to giving a unified sentence of *at least* ten years." (R., pp.17-21 (emphasis added).)

On October 2, 2015 – approximately 15 months after the district court entered its order denying Navarrete's Rule 35 motion and long after the order became final, Navarrete filed a motion to reconsider the order denying his Rule 35 motion for correction of an illegal sentence, again claiming that his sentence was illegal because I.C. § 19-2513 required the court to impose only the mandatory minimum sentence of 10 years for his second degree murder conviction. (R., pp.22-29.) On November 9, 2015, the district court entered an order dismissing the motion as untimely. (R., p.30.) On November 27, 2015, Navarrete filed a notice of appeal timely only from the district court's order dismissing his motion to reconsider the order denying his Rule 35 motion for correction of an illegal sentence. (R., pp.31-35.)

On appeal, Navarrete asserts that the district court erred "when it denied [his] Rule 35 motion to correct an illegal sentence" because, mindful of legal authority to the contrary, he claims "I.C. § 19-2513 required that the court impose only the mandatory minimum of ten years" for his second degree murder conviction. (Appellant's brief, pp.3-4.) This Court is without jurisdiction to consider Navarrete's challenge to the

district court's order denying his Rule 35 motion for correction of an illegal sentence because Navarrete's notice of appeal was not timely filed from that order.

Idaho Appellate Rule 14(a) requires an appellant to file a notice of appeal within 42 days from the entry of judgment or order from which the appeal is taken. The requirement of perfecting an appeal within the 42-day time period is jurisdictional, and any appeal taken after expiration of the filing period must be dismissed. I.A.R. 21 (failure to file a notice of appeal within time limits prescribed by appellate rules is jurisdictional and requires automatic dismissal of the appeal).

Despite noting that his notice of appeal – filed on November 27, 2015 – is timely (only) “from the district court's [November 9, 2015] order dismissing his motion to reconsider,” Navarrete nevertheless attempts on appeal to challenge the district court's July 3, 2014 order denying his Rule 35 motion for correction of an illegal sentence.<sup>1</sup> (Appellant's brief, pp.2-4; R., pp.17-21.) This Court is without jurisdiction to entertain Navarrete's appellate claim because Navarrete failed to file his notice of appeal within 42 days of the order denying his motion for correction of an illegal sentence, and his motion to reconsider the district court's order denying his Rule 35 motion for correction of an illegal sentence – filed over one year later on October 2, 2015 – did not extend the time for appealing from the order denying his motion for correction of an illegal sentence. See, e.g., State v. Yeaton, 121 Idaho 1018, 1019, 829 P.2d 1367, 1368 (Ct. App. 1992) (appeal of an order made after judgment must be filed within 42 days of that order); State v. Nelson, 104 Idaho 430, 659 P.2d 783 (Ct. App. 1983) (time for appeal

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<sup>1</sup> Navarrete's notice of appeal was filed 512 days after the district court entered its order denying his motion for correction of an illegal sentence. (R., pp.17, 31.)

from order suppressing evidence not extended by motion to reconsider suppression order).

Navarrete did timely file his notice of appeal from the district court's November 9, 2015 order dismissing his motion to reconsider. (R., pp.30-31.) However, Navarrete raises no issue on appeal challenging the district court's order dismissing his motion to reconsider,<sup>2</sup> and the timeliness of his appeal from that order does not confer jurisdiction on this Court to entertain the illegal sentence issue Navarrete raises on appeal. For that, Navarrete would have had to raise the issue in a timely appeal from July 3, 2014, the date the district court actually entered the order denying Navarrete's Rule 35 motion for correction of an illegal sentence. Because Navarrete did not timely appeal from the July 3, 2014 order denying his Rule 35 motion for correction of an illegal sentence, and because that correctness of that order is the only issue Navarrete

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<sup>2</sup> Even if Navarrete were challenging the order dismissing his motion to reconsider the district court's denial of his motion for correction of an illegal sentence, his renewed claim that his sentence was illegal because it exceeds the 10-year mandatory minimum (required by I.C. § 18-4004) is barred by the doctrine of *res judicata*, which prevents re-litigation of issues that have been previously decided in a final judgment or decision in an action between the same litigants. State v. Rhoades, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000). "[Th]e doctrine of *res judicata* can be applied to bar consideration of subsequent Rule 35 motions to the extent those motions attempt to relitigate issues already finally decided in earlier Rule 35 motions." Id. Navarrete never appealed from the district court's July 3, 2014 order denying his motion for correction of an illegal sentence; therefore, the order became final 42 days after its issuance. (R., p.17.) Navarrete's motion to reconsider, which raised the same issue and contained virtually indistinguishable argument (compare R., pp.10-16 with R., pp.22-28), was filed October 2, 2015 – over a year after the district court's order denying Navarrete's motion for correction of an illegal sentence had become final (R., pp.17, 22). Because the same illegal sentence issue that Navarrete raised in his motion to reconsider had already been decided in a final order, any claim that the court erred by dismissing the motion for reconsideration is barred under the doctrine of *res judicata*.

raises on appeal, this Court lacks jurisdiction to consider Navarrete's appellate claim, and his appeal must be dismissed.

Conclusion

The state respectfully requests this Court to dismiss Navarrete's appeal of the district court's order denying his Rule 35 motion for correction of an illegal sentence as untimely.

DATED this 3rd day of August, 2016.

/s/ Lori A. Fleming  
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Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of August, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

REED P. ANDERSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ Lori A. Fleming  
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