

4-25-2016

## State v. Gable Respondent's Brief Dckt. 43767

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Gable Respondent's Brief Dckt. 43767" (2016). *Not Reported*. 2963.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/2963](https://digitalcommons.law.uidaho.edu/not_reported/2963)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43767
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2005-245
	)	
MARK WESLEY GABLE,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Gable failed to show error in the district court's denial of his Rule 35 motion for correction of an illegal sentence?

Gable Has Failed To Show Error In The District Court's Denial Of His Rule 35 Motion For Correction Of An Illegal Sentence

In 2005, a jury found Gable guilty of three counts of aiding and abetting burglary and one count of conspiracy to traffic in methamphetamine by manufacturing, and the district court imposed consecutive sentences of one year fixed for the first count of aiding and abetting burglary, two years fixed for the second and third counts of aiding

and abetting burglary, and a unified sentence of 25 years, with 15 years fixed, for conspiracy to traffic in methamphetamine by manufacturing. (32446 R., pp.127-31.) Gable appealed and the Idaho Court of Appeals affirmed his convictions and sentences. State v. Gable, 2007 Unpublished Opinion No. 619, Docket No. 32446 (Idaho App., October 16, 2007). Gable also filed a petition for post-conviction relief contending that his trial counsel was ineffective for failing to file a motion to suppress evidence due to an illegal stop, which the district court summarily dismissed. State v. Gable, 2010 Unpublished Opinion No. 520, Docket No. 36233 (Idaho App., June 22, 2010). Gable appealed and the Idaho Court of Appeals affirmed the district court's order summarily dismissing Gable's petition for post-conviction relief, finding that "the officers had reasonable, articulable suspicion to stop his vehicle." Id. at 10.

On October 29, 2015, Gable filed a Rule 35 motion for correction of an illegal sentence, which the district court denied. (43767 R., pp.32-51, 122-25.) Gable filed a notice of appeal timely only from the district court's order denying his Rule 35 motion for correction of an illegal sentence. (43767 R., pp.126-29.)

Gable asserts that the district court erred by denying his Rule 35 motion for correction of an illegal sentence in light of his claim that "the district court lacked subject matter jurisdiction because the traffic stop which led to his arrest was supported by neither reasonable suspicion nor probable cause." (Appellant's brief, pp.3-4.) Gable has failed to show error in the district court's denial of his Rule 35 motion.

Pursuant to Idaho Criminal Rule 35, a district court may correct a sentence that was imposed in an illegal manner within 120 days after the filing of a judgment of conviction. The court may, however, correct a sentence that is "illegal from the face of

the record at any time.” I.C.R. 35. Because these filing limitations are jurisdictional, the district court lacks jurisdiction to grant any motion requesting relief that is filed after the time limit proscribed by the rule. State v. Sutton, 113 Idaho 832, 748 P.2d 416 (Ct. App. 1987). Gable’s Rule 35 motion was filed over 10 years after sentencing. Therefore, the district court had jurisdiction to consider only whether Gable’s sentence was illegal.

On appeal, Gable acknowledges that his sentences are not illegal from the face of the record. (Appellant’s brief, pp.3-4 (“Mindful of *State v. Clements*, 148 Idaho 82, 87 (2009), Mr. Gable contends the district court should have held an evidentiary hearing on his Rule 35 motion to consider whether the traffic stop was legal, and whether the district court had subject matter jurisdiction.”).) In State v. Clements, 148 Idaho 82, 87, 218 P.3d 1143, 1148 (2009), the Idaho Supreme Court held that “the interpretation of ‘illegal sentence’ under Rule 35 is limited to sentences that are illegal from the face of the record, i.e., those sentences that do not involve significant questions of fact nor an evidentiary hearing to determine their illegality.” An illegal sentence under Rule 35 is one in excess of a statutory provision or otherwise contrary to applicable law. State v. Alsanea, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003).

Gable’s consecutive sentences of one year fixed for the first count of aiding and abetting burglary, two years fixed for the second and third counts of aiding and abetting burglary, and a unified sentence of 25 years, with 15 years fixed, for conspiracy to traffic in methamphetamine by manufacturing all fall well within the statutory maximums permitted by law. See I.C. §§ 18-204, -1403 (the penalty for aiding and abetting burglary is not less than one year, up to 10 years in prison) and I.C. §§ 18-1701, 37-2732B(a)(3) (the penalty for conspiracy to traffic in methamphetamine by manufacturing

is a mandatory minimum sentence of five years fixed, up to life in prison). Gable's claims of defects in the underlying proceedings do not fall within the scope of a motion for correction of an illegal sentence pursuant to Rule 35. See, e.g., State v. McDonald, 130 Idaho 963, 965, 950 P.2d 1302, 1304 (Ct. App. 1997) ("[Rule 35] cannot be used as the procedural mechanism to attack the validity of the underlying conviction.").

Because Gable's sentences do not exceed the statutory maximums, and because the sentences are not otherwise contrary to applicable law, Gable has failed to show any basis for reversal of the district court's order denying his Rule 35 motion for correction of an illegal sentence.

#### Conclusion

The state respectfully requests this Court to affirm the district court's order denying Gable's Rule 35 motion for correction of an illegal sentence.

DATED this 25th day of April, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of April, 2016, served a true and correct copy of the attached RESPONDENTS BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General