

1-18-2018

State v. Savage Respondent's Brief Dckt. 45255

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Savage Respondent's Brief Dckt. 45255" (2018). *Not Reported*. 4096.
https://digitalcommons.law.uidaho.edu/not_reported/4096

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.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

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

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45255
Plaintiff-Respondent,)	
)	Canyon County Case No.
v.)	CR-2007-14455
)	
BRANDON E. SAVAGE,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Savage failed to establish that the district court erred by denying his Rule 35 motion for correction of an illegal sentence?

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

In 2008, Savage pled guilty to possession of sexually exploitative material and the district court imposed a unified sentence of 10 years, with three years fixed, suspended the sentence, and placed Savage on probation for 10 years. (42717 R., pp.77-80.) In 2011, pursuant to a post-conviction proceeding, the district court resentenced Savage to a unified sentence of 10 years,

with three years fixed, suspended the sentence, and placed him on probation for 10 years commencing from the date of the original judgment. (42717 R., pp.137-46.) After Savage was found in violation of his probation on three separate occasions, the district court revoked Savage's probation and executed the underlying sentence. (42717 R., pp.182-83, 224-25, 351-52.) Savage appealed and, on October 30, 2015, the Idaho Court of Appeals affirmed the district court's order revoking probation and executing Savage's original sentence. (45255 R., pp.44-45.) Savage also filed a timely Rule 35 motion for reduction of sentence, which the district court denied. (42717 R., pp.344-45, 359-63; 45255 R., pp.19-23.)

On February 17, 2016, Savage filed a Rule 35 motion for correction of an illegal sentence, claiming that his sentence was illegal because the Idaho Department of Correction failed to provide him appropriate medical care. (45255 R., pp.52-57.) The district court denied the motion, finding that Savage had not shown that his sentence was illegal. (45255 R., pp.99-103.)

On October 17, 2016, Savage filed a second Rule 35 motion for correction of an illegal sentence, claiming that his sentence was illegal because I.C. § 18-1507A – the statute under which he was convicted in 2011 – was repealed in 2012 and I.C. § 18-1507 was amended to include the information that was previously contained in I.C. § 18-1507A. (45255 R., pp.146-51.) The district court denied the motion, finding that Savage's motion was without merit and stating, "The fact that the code section changed in 2012 is of no import when the prior judgments and the specific crime identified by name make it clear that Defendant was convicted of the crime of Possession of Sexually Exploitative Material" and "that same act is now criminalized in § 18-1507(2)(a)." (45255 R., pp.255-59.)

On May 16, 2017, Savage filed a third Rule 35 motion for correction of an illegal sentence, claiming that his sentence was illegal because he “was not allowed to introduce mitigating evidence at or during his sentencing,” including information regarding his abusive childhood, mental health issues, willingness to participate in treatment, and status as a first-time felon – all of which he indicated was documented in his PSI. (45255 R., pp.328-33.) On June 22, 2017, the district court entered an order denying Savage’s motion, once again finding that Savage had not shown that his sentence was illegal. (45255 R., pp.352-58.) On July 5, 2017, Savage filed a notice of appeal timely only from the district court’s June 22, 2017 order denying Savage’s Rule 35 motion for correction of an illegal sentence. (45255 R., pp.359-62.)

“Mindful of controlling authority supporting the district court’s order,” Savage nevertheless asserts that the district court erred by denying his Rule 35 motion for correction of an illegal sentence “because he was not allowed to present the mitigating evidence contained in his motion at sentencing.” (Appellant’s brief, pp.1, 3.) Savage has failed to show error in the denial of his Rule 35 motion for correction of an illegal sentence.

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). Savage’s fourth Rule 35 motion was filed approximately six years after sentencing. Therefore, the district court had jurisdiction to consider only whether Savage’s sentence was illegal.

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). Rule 35 “cannot be used as the procedural mechanism to attack the validity of the underlying conviction.” State v. McDonald, 130 Idaho 963, 965, 950 P.2d 1302, 1304 (Ct. App. 1997).

The maximum prison sentence for possession of sexually exploitative material is 10 years. I.C. § 18-1507A (2011).¹ Savage’s unified sentence of 10 years, with three years fixed, falls well within the statutory guidelines. In its order denying Savage’s fourth Rule 35 motion, the district court correctly concluded:

Defendant's Motion is comprised entirely of factual information that he asserts should have been considered by the court as mitigating information prior to determining and imposing his sentence. The presence of [sic] lack of this factual information at sentencing does not render the sentence illegal on its face. Unlike a sentence for 10 years where the maximum penalty under the law is 5 years which is clearly illegal under any construction of facts and must therefore be corrected, the factual allegations as presented here, by their very nature, would require an evidentiary hearing to establish their scope and veracity, further, there is no indication that the sentence would have been different. The Court therefore finds that the sentence is not illegal and the Defendant's motion is therefore denied.

(45255 R., pp.355-56.) Savage has not shown that his sentence is illegal, nor has he shown any basis for reversal of the district court’s order denying his Rule 35 motion for correction of an

¹ At the time that Savage’s sentence was imposed in 2011, the punishment for possession of sexually exploitative material was found under I.C. § 18-1507A; however, I.C. § 18-1507A was repealed in 2012 and I.C. § 18-1507 was amended to include the information that was previously contained in I.C. § 18-1507A. The punishment for possession of sexually exploitative material is now found under I.C. § 18-1507(3); the maximum prison sentence remains 10 years.

illegal sentence. Therefore, the district court's June 22, 2017 order denying Savage's May 16, 2017 Rule 35 motion for correction of an illegal sentence should be affirmed.

Conclusion

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

DATED this 18th day of January, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of January, 2018, 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.

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