

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

1-26-2018

State v. Contreras Respondent's Brief Dckt. 45226

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

Recommended Citation

"State v. Contreras Respondent's Brief Dckt. 45226" (2018). *Not Reported*. 4369.
https://digitalcommons.law.uidaho.edu/not_reported/4369

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact 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. 45226
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-1998-632
)	
JORGE ALFREDO CONTRERAS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

In 1998, Contreras was convicted of second degree murder and the district court imposed a unified life sentence, with 30 years fixed. (Judgment of Conviction, pp.59-61 (Augmentation).) Approximately 19 years later, Contreras filed a Rule 35 motion for correction of an illegal sentence, which the district court denied. (R., pp.14-21, 22-23.) Contreras filed a

notice of appeal timely from the district court's order denying his Rule 35 motion for correction of an illegal sentence. (R., pp.24-27.)

Contreras asserts that the district court erred by denying his Rule 35 motion for correction of an illegal sentence as untimely and also claims his sentence is in fact illegal because "the crime he was convicted of only carries 10 years fixed which can be extended to life." (Appellant's brief, pp.6-11.) Contreras 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 is "illegal from the face of the record at any time." 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).

The state concedes the district court had jurisdiction to rule on Contreras' Rule 35(a) motion. See I.C.R. 35(a) ("The court may correct a sentence that is illegal from the face of the record at any time."); State v. Wolfe, 158 Idaho 55, 62-63, 343 P.3d 497, 504-05 (2015) ("While Rule 35 provides that a defendant may only file one motion seeking a sentence reduction, there is no such limitation listed for Rule 35 motions alleging an illegal sentence." (citations omitted)). Contreras has nevertheless failed to show any basis for reversal of the order denying his motion because, contrary to Contreras' assertions, his sentence is not illegal.

Contreras was convicted of second degree murder. (Judgment of Conviction, pp.59-61 (Augmentation).) Idaho Code § 18-4004 states, in relevant part: “Every person guilty of murder of the second degree is punishable by imprisonment **not less than** ten (10) years and the imprisonment may extend to life.” (Emphasis added). On appeal, Contreras interprets this statute to mean that he could only be sentenced to 10 years fixed. (Appellant’s brief, pp.7-9.) Contreras is incorrect. Pursuant to the plain language of the statute, the district court was required to sentence Contreras to a mandatory minimum term of imprisonment of 10 years fixed, but had discretion to impose as sentence of up to fixed life.

As explained in State v. Griffith, 157 Idaho 409, 410, 336 P.3d 816, 817 (Ct. App. 2014), Idaho Code section 19-2513 gives a district court discretion to determine what portion of the sentence *in excess of* the mandatory fixed term will be fixed. Because I.C. § 18-4004 provides that the penalty for second degree murder is “imprisonment not less than ten (10) years and the imprisonment may extend to life,” the district court was authorized, in its discretion, to determine what portion of Contreras’ *in excess of the 10-year mandatory minimum fixed term* would be fixed, with a maximum allowable fixed sentence of life in prison. I.C. §§ 18-4004, 19-2513; Griffith, 157 Idaho at 410, 336 P.3d at 817. Contreras’ unified sentence of life, with 30 years fixed, for second degree murder is therefore consistent with the applicable statutes and not an illegal sentence.

Because Contreras’ sentence falls within the statutory guidelines and is not in excess of a statutory provision or otherwise contrary to applicable law, Contreras has failed to show that his sentence is illegal. He has thus also 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 Contreras's Rule 35 motion for correction of an illegal sentence.

DATED this 26th day of January, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of January, 2018, I caused a true and correct copy of the foregoing RESPONDENT'S BRIEF to be placed in the United States mail, postage prepaid, addressed to:

JORGE ALFREDO CONTRERAS
IDOC #51408
P.O. BOX 70010
BOISE, ID 83707

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