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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|------------------------|---|--------------------------|
| STATE OF IDAHO, |) | |
| |) | |
| Plaintiff-Respondent, |) | NO. 45387 |
| |) | |
| v. |) | ADA COUNTY NO. HCR14720A |
| |) | |
| DANIEL EDWARD RODGERS, |) | |
| |) | APPELLANT'S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

STATEMENT OF THE CASE

Nature of the Case

Daniel Edward Rodgers appeals from the district court's denial of his Idaho Criminal Rule 35 (Rule 35) motion to correct an illegal sentence. Mindful of the controlling authorities, he asserts the district court erred when it denied his Rule 35 motion.

Statement of the Facts and Course of Proceedings

Following a jury trial in 1988, Mr. Rodgers was convicted of murder in the first degree, felony, I.C. § 18-4001, 18-4002 and 18-4003. (*See R.*, pp.6, 11.) The district court sentenced Mr. Rodgers "to the custody of the State Board of Correction of the State of Idaho for the FIXED

term of life; no portion of the sentence to be indeterminate; to be held in confinement without possibility of parole” (*See R.*, pp.6, 12.) He received credit for time served in pre-judgment incarceration from July 6, 1987, the date when he was taken into custody. (*R.*, pp.12-13.)

On July 10, 2017, Mr. Rodgers filed, pro se, a Motion for Correction or Reduction of Sentence, ICR 35. (*R.*, pp.6-8.) Mr. Rodgers’ Rule 35 motion asserted his sentence was illegal. (*R.*, p.7.) Mr. Rodgers asserted that, “[a]t the time of sentencing Idaho defined three types of life sentences: life with the possibility of parole, fixed life with no possibility of parole—not to exceed 30 years, and natural life—or confinement until death.” (*R.*, p.7.) He asserted he “was sentenced to fixed life with no possibility of parole, and he was given credit for time served from July 6, 1987. Rodgers’ sentence, therefore, expired on July 6, 2017.” (*R.*, p.7.)

Mr. Rodgers further asserted, “[s]ince sentencing the Idaho legislature has changed the definition of fixed life to equate to natural life, however this definition was not retroactive. Rodgers has sought release from his now expired sentence, however, due to the confusion of the legal definition of the term: Fixed Life, he has been unsuccessful.” (*R.*, p.7.) He reminded “the court that at arraignment he was informed of the . . . ‘charge(s) filed being a felony, and of the possible penalties which could be imposed,’ which was . . . ‘up to a maximum determinate sentence of life not to exceed thirty <30> years’” (*R.*, p.7; *see R.*, p.9 (“Arrestment Minutes, Oct. 20, 1987”).)

Thus, Mr. Rodgers requested the district court correct his sentence “[t]o read: fixed life not to exceed thirty-years. To correct sentence so it does not exceed the maximum sentence advised at the 1987 arraignment. Order Rodgers be immediate[ly] released as the sentence has expired.” (*R.*, p.8.)

Attached to the Rule 35 motion were documents including “Arrest Minutes, October 20, 1987” (R., p.9), “Court Minutes, October 20, 1987” (R., p.10), and Mr. Rodgers’ Judgment of Conviction (R., pp.11-13).

Mr. Rodgers also filed a Motion for Hearing on his Rule 35 motion. (R., pp.15-16.)

The district court subsequently issued an Order Denying Motion for Hearing and for Reduction or Correction of Sentence Pursuant to I.C.R. 35. (R., pp.17-21.) The district court did not find that a hearing was necessary. (R., p.17.)

The district court then wrote Mr. Rodgers “was convicted of first degree murder in a jury trial on March 18, 1988, and was sentenced to a fixed life term without the possibility of parole. *State v. Rodgers*, 119 Idaho 1047, 1047, 812 P.2d 1208, 1208 (1991).” (R., p.18.) The district court stated that in 1988, I.C. § 18-4004 provided, “every person guilty of murder of the first degree shall be punished by death or by imprisonment for life, provided that whenever the court shall impose a sentence of life imprisonment, the court shall set forth in its judgment and sentence a minimum period of confinement of not less than ten (10) years during which period of confinement that offender shall not be eligible for parole” (R., p.19 (quoting S.L. 1986, ch. 232, § 2, p.639).)

According to the district court, “[a]s explained by the Court in its Findings of Fact and Conclusions of Law (filed Aug. 26, 1988), the Court had three sentencing options following the jury finding the Defendant guilty of first degree murder.” (R., p.19.) Those options were “(1) an indeterminate life sentence with a minimum period of confinement of 10 years, (2) a fixed life sentence, or (3) a death sentence.” (R., p.19.) The district court noted, “[t]he Court sentenced Defendant to a fixed life sentence with no possibility of parole, as reflected in the Judgment of Conviction (filed September 2, 1988).” (R., p.19.)

The district court then mentioned how “the Court of Appeals also addressed the legally authorized sentence for first degree murder.” (R., p.20.) In Mr. Rodgers’ appeal before the Idaho Court of Appeals, the Court of Appeals wrote, “[t]he only authorized punishment for murder in the first degree is death or life imprisonment. A life sentence may state not less than ten years as the minimum period of incarceration. I.C. § 18-4004. The district court imposed upon Rodgers a fixed life sentence for the murder of Preston Murr.” (R., p.20 (quoting *State v. Rodgers*, 119 Idaho 1066, 1077 (Ct. App. 1990).) Thus, the district court determined “there is no question that Defendant’s current sentence of fixed life is not illegal, nor is it contrary to the version of Idaho Code § 18-4004 at the time of Defendant’s sentencing.” (R., p.20.)

The district court next turned to Mr. Rodgers’ argument on “the purported advisement received at his arraignment that he could receive ‘a maximum determinate sentence of life not to exceed thirty (30) years with no less than ten (10) years.’” (R., p.20; *see* R., p.9.) The district court stated that “[t]he court file contains no copy of the document Defendant attached to his brief which purports to show that the Court misadvised Defendant that he could only receive up to 30 years.” (R., p.20.) Additionally, the district court determined, “even assuming as true that Defendant was misinformed at his arraignment as to the possible penalty (which there is insufficient information before the Court to determine that he was), such misinformation does not render his sentence illegal.” (R., p.20.) The district court therefore denied Mr. Rodgers’ Rule 35 motion. (R., p.20.)

Mr. Rodgers filed, pro se, a Notice of Appeal timely from the district court’s Order Denying Motion for Hearing and for Reduction or Correction of Sentence Pursuant to I.C.R. 35. (R., pp.22-25.)

ISSUE

Did the district court err when it denied Mr. Rodgers' Idaho Criminal Rule 35 motion to correct an illegal sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Rodgers' Idaho Criminal Rule 35 Motion To Correct An Illegal Sentence

Mr. Rodgers asserts the district court erred when it denied his Rule 35 motion to correct an illegal sentence.

Idaho Criminal Rule 35 provides, “[t]he court may correct a sentence that is illegal from the face of the record at any time.” I.C.R. 35(a). The Idaho Supreme Court has held that “the term ‘illegal sentence’ under Rule 35 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.” *State v. Clements*, 148 Idaho 82, 86 (2009). The *Clements* Court also held, “Rule 35 is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal; rather, the rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law or where new evidence tends to show that the original sentence was excessive.” *Id.*

At the time of Mr. Rodgers' sentencing in 1988, the statute governing the punishment for murder provided that “every person guilty of murder of the first degree shall be punished by death or by imprisonment for life, provided that whenever the court shall impose a sentence of life imprisonment, the court shall set forth in its judgment and sentence a minimum period of confinement of not less than ten (10) years during which period of confinement the offender shall not be eligible for parole” I.C. § 18-4004 (1986); *see State v. Paul*, 118 Idaho 717, 718 (Ct. App. 1990). In the instant case, the district court sentenced Mr. Rodgers “to the custody

of the State Board of Correction of the State of Idaho for the FIXED term of life; no portion of the sentence to be indeterminate; to be held in confinement without possibility of parole” (See R., pp.6, 12.)

The Idaho Supreme Court has rejected the argument “that a life sentence is the equivalent of a thirty-year sentence.” See *State v. Wood*, 125 Idaho 911, 913 (1993).¹ Similarly, the Idaho Court of Appeals has held that, “under Idaho law, a life sentence is not and never has been a thirty-year sentence, nor is there any ‘custom and usage’ making it so.” *State v. Murphy*, 144 Idaho 152, 153 (2007).

Mindful of the above authorities, Mr. Rodgers asserts the district court erred when it denied his Rule 35 motion to correct an illegal sentence. As Mr. Rodgers asserted before the district court, he “was sentenced to fixed life with no possibility of parole, and he was given credit for time served from July 6, 1987.” (See R., p.7.) As Mr. Rodgers asserted, his sentence fell into the category of “fixed life with no possibility of parole—not to exceed 30 years”;

¹ The *Wood* appellant “was sentenced to a term of not less than fourteen years nor more than twenty-two years upon his conviction for the crime of attempted first-degree murder.” *Wood*, 125 Idaho at 913. The maximum sentence for attempted first-degree murder was one-half of a life sentence. *Id.* The *Wood* appellant argued his sentence was illegal because the twenty-two-year maximum term of imprisonment was in excess of one-half of a life sentence. *Id.* He cited *King v. State*, 93 Idaho 87, 93 (1969), where the Idaho Supreme Court stated “sentences of thirty years or more must be treated for purposes of parole eligibility as effective life sentences.” *Wood*, 125 Idaho at 913. The *Wood* appellant argued “that since thirty-year sentences are the equivalent of life sentences and attempted first-degree murder carries a maximum term of one-half of a life sentence, the maximum term of imprisonment for attempted first-degree murder is fifteen years.” *Id.*

The Idaho Supreme Court explained, “*King* does not hold that a life sentence is the equivalent of a thirty-year sentence. Instead, *King* held that *for purposes of parole eligibility* under the former I.C. § 20-223, a sentence of *thirty years or more* must be treated as a life sentence thus making a defendant serving a sentence of thirty years or more eligible for parole after ten years.” *Id.* The *Wood* Court also held “the quote from *King* identified by *Wood* no longer has precedential value in light of the adoption of the Unified Sentencing Act in 1986, codified at I.C. § 19-2513.” *Id.*

therefore, his sentence “expired on July 6, 2017.” (*See R.*, p.7.) Thus, the district court erred when it denied Mr. Rodgers’ Rule 35 motion.

CONCLUSION

For the above reasons, Mr. Rodgers respectfully requests that this Court vacate the district court’s Order Denying Motion for Hearing and for Reduction or Correction of Sentence Pursuant to I.C.R. 35, and remand this case for further proceedings.

DATED this 1st day of February, 2018.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of February, 2018, 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:

DANIEL EDWARD RODGERS
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ISCC
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SAMUEL A HOAGLAND
ADA COUNTY COURTHOUSE
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas