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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45879
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2012-5898
v.)	
)	
RAYLAND BROWN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE SAMUEL A. HOAGLAND
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Mr. Brown was convicted of felony domestic battery committed in the presence of a child, and sentenced to a twenty year term, with fifteen years determinate. Mr. Brown filed a successful Idaho Criminal Rule 35(b) (“Rule 35”) motion to reduce his sentence, and the district court reduced the determinate term of his sentence to eleven years. Throughout the course of his case, Mr. Brown has challenged several issues related to his conviction and sentence. The issue on appeal in the present action is the district court’s abuse of discretion in denying Mr. Brown’s motion to withdraw his plea, his motion to disqualify the court, and his Rule 35(a) motion to correct an illegal sentence.

Statement of the Facts and Course of Proceedings

In 2012, the State filed an Indictment charging Mr. Brown with forcible sexual penetration by use of a foreign object. (Docket No. 41488, R., pp.20-21.)¹ The parties entered into a Rule 11 agreement whereby Mr. Brown agreed to plead guilty to the amended charge of domestic battery in the presence of a child, in violation of I.C. §§ 18-902, 918(2), 918(4). (No. 41488, R., pp.62-68, 74-76.) The State filed an Information which reflected that amended charge. (No. 41488, R., pp.60-61.) Initially, the court imposed a unified sentence of twenty years, with fifteen years fixed, and retained jurisdiction. (No. 41488, R., pp.77-79.) Subsequent to his rider, Mr. Brown’s sentence was executed; however, he filed a motion for reconsideration and the court reduced the determinate term of his sentence from fifteen to eleven years. (No. 41488, R., pp.87-88, 90, 106-107.)

Mr. Brown filed a petition for post-conviction relief based upon trial counsel's ineffective assistance of counsel, and subsequent to the summary dismissal, he filed an appeal. (R., p.21.)² In that appeal, he asserted for the first time that the district court did not have subject-matter jurisdiction because the State filed an Information containing the amended charge, but such Information was filed without a commitment as required by article 1, section 8, of the Idaho Constitution. The Supreme Court denied relief, determining Mr. Brown could not raise the issue of subject-matter jurisdiction on the criminal case in the context of the petition for post-conviction relief; notwithstanding the court's determination, it concluded the district court did have jurisdiction. (R., pp.21-24.)

In January of 2016, Mr. Brown filed a pro se Motion for Correction or Reduction of Sentence, ICR 35, requesting the court to correct his illegal sentence under Rule 35(a). Mr. Brown cited to the article 1, section 8, of the Idaho Constitution, seeming to assert the district court lacked subject-matter jurisdiction. (R., pp.14-18.) The district court denied relief, contending that under Rule 35(a), Mr. Brown did not provide a basis for relief, and under Rule 35(b), Mr. Brown had already exhausted his available remedy under Rule 35(b) and his sentence was previously reduced, and further, that a motion under Rule 35(b) was untimely. (R., pp.26-28.) Mr. Brown did not appeal this decision.

In December of 2017, Mr. Brown filed a Rule 35 motion for correction of illegal sentence, contending his sentence exceeded the maximum allowable punishment. (R., pp.31-34.) Mr. Brown acknowledged that pursuant to I.C. § 18-918(4), the maximum penalty may be

¹The record on appeal was augmented on April 10, 2018, to include Mr. Brown prior appeal of his post-conviction case, Docket No. 41488, *State v. Brown* (Ada County No. CRFE-2012-5898). Mr. Brown refers to that augmented portion of the record as, "No. 41488, R., page."

doubled where the domestic violence occurs in the presence of a child, but challenged whether there was a factual basis for the “in the presence of a child” enhancement. (R., pp.33-34.) Mr. Brown attached an affidavit, asserting that the fifteen-year old child in his case was not actually physically present, because he was upstairs. (R., pp.46-47.) Mr. Brown requested court-appointed counsel and a hearing. (R., pp.38-39.)

The district court denied his motion for appointed counsel, having determined under Rule 35(b), Mr. Brown’s motion was frivolous, given he failed to fulfill the requirement under *State v. Huffman*, 144 Idaho 201, 203 (2007) to provide new information. (R., p.50.) The district court similarly concluded a Rule 35(a) motion to be frivolous, as there is “absolutely no question that the sentence imposed is not illegal from the face of the record.” (R., pp.52-53.) Mr. Brown did not appeal that decision.

The focus now turns to Mr. Brown’s current challenges. In January of 2018, Mr. Brown filed two new motions, one to disqualify the district judge without cause, asserting the current judge was not the same as the judge who presided over the sentencing hearing, and a Rule 35(a) motion to correct an illegal sentence on the basis that the court lacked subject-matter jurisdiction because the amended information was not based upon a commitment by a magistrate occurring after a preliminary hearing or its waiver. (R., pp.55-56; 58-59.) The district court denied Mr. Brown’s motion for disqualification because it was not timely filed. (R., pp.87-88.) Mr. Brown’s motion for correction of an illegal sentence was also denied because the record clearly showed Mr. Brown clearly and unequivocally consented the amended charge, waived the lack of commitment by a magistrate, and pled guilty. (R., p.90.)

² The Idaho Supreme Court’s Opinion in this case, *Brown v. State*, Docket No. 42511-2014, now published at *Brown v. State*, 159 Idaho 496 (2015), provides additional factual background and was attached to the State’s Objection to Defendant’s I.C.R. 35 Motion as Exhibit 1.

In March 2018, Mr. Brown filed a motion to withdraw his guilty plea and requested a hearing. (R., p.92.) In his memorandum, Mr. Brown asserted his plea was not knowingly, intelligently, or voluntarily made, because it was based upon faulty advice of his counsel, who was ineffective. (R., p.102.) Mr. Brown contended counsel and the prosecution were aware of facts that disproved an element of the crime, and that he and the victim were not household members. (R., pp.99-102.) *See also* ICJI 1279B. The district court denied Mr. Brown's motion to withdraw his guilty plea for failure to demonstrate his plea was not knowing, intelligent, and voluntary, and failing therefore to demonstrate manifest injustice occurred. (R., p.132.) The court explained it had examined the record and determined Mr. Brown was questioned at length during his plea to ensure he understood the nature of the charges and consequences of his plea, discussed the elements of the charge with the court, and was read the definition of "household member" pursuant to I.C. § 18-918(1). The district court concluded Mr. Brown communicated that he understood the definition, admitted he lived with the victim, struck the victim, and caused injury to the victim in the presence of a child. (R., pp.132-133.) As such, Mr. Brown's plea was not shown to be involuntary and no manifest injustice occurred. (R. p.134.)

On March 19, 2018, Mr. Brown filed an appeal, asserting the district court abused its discretion by denying Mr. Brown's Rule 35 motion and his motion to disqualify the judge without cause. (R., pp.132-134.) Mr. Brown filed another appeal on March 22, 2018, challenging the district court's denial of his motion to withdraw his guilty plea. (R., pp.152-157.)

ISSUES

- I. Did the district court err when it denied Mr. Brown's Rule 35(a) motion to correct an illegal sentence?
- II. Did the district court err when it denied Mr. Brown's motion to disqualify?
- III. Did the district court err when it denied Mr. Brown's motion to withdraw his guilty plea?

ARGUMENT

I.

The District Court Erred When It Denied Mr. Brown's Rule 35(a) Motion To Correct An Illegal Sentence Because The District Court Did Not Have Jurisdiction

Mr. Brown asserts that the district court erred when it denied his Rule 35(a) motion to correct an illegal sentence based upon the district court's lack of subject matter jurisdiction. "Whether a court lacks jurisdiction is a question of law that may be raised at any time, and over which appellate courts exercise free review." *State v. Jones*, 140 Idaho 755, 757 (2004) (citation omitted). In a criminal case, the filing of a charging document alleging that an offense occurred within the state confers subject matter jurisdiction, and the question of whether the charging document conforms to the requirements of law is also a question subject to free review. *Id.*

Mindful of *State v. Stewart*, 149 Idaho 383, 387 (2010) (holding a defendant who waives his right to a preliminary hearing waives the right to a probable cause determination regarding the crimes charged); *State v. Hoagland*, 160 Idaho 920, 922-923 (Ct. App. 2016) (holding a valid plea of guilty waives all non-jurisdictional defects and defenses and "when the charging document's jurisdictional sufficiency is challenged after trial, it will be upheld unless it is so defective that it does not, by any fair or reasonable construction, charge the offense for which the defendant was convicted"); and *Brown v. State*, 159 Idaho at 497, n.2, Mr. Brown asserts the Information to which he pled contained a different offense than that charged in the original Indictment, and since the Information was not based upon the commitment of a magistrate following a preliminary hearing or its waiver, the Information did not impart subject matter jurisdiction on the district court. Moreover, Mr. Brown entered into an Idaho Criminal Rule 11 agreement with the State and executed a plea form, but these documents do not contain an

express waiver of his right to preliminary hearing. As such, he contends the district court abused its discretion in denying his Rule 35 motion and his sentence should be vacated.

II.

The District Court Abused Its Discretion In Denying Mr. Brown's Motion To Disqualify

Mr. Brown asserted the district court should have granted his motion to disqualify because the court presiding over his most recent challenges was not the original sentencing judge. (R., pp.55-56.) Pursuant to Rule 25, the parties to a criminal action possess the right to disqualify one judge without cause, provided it is timely made. I.C.R. 25 (a)(1)(2). Each party possesses this right of disqualification as to both the magistrate appointed to hear the preliminary hearing and the district judge appointed to hear the trial. I.C.R. 25(a)(1). In this case, it is clear that the judge presiding over the sentencing matter is not the same judge presiding over Mr. Brown's recent motions. (No. 41488, R., pp.77-79, 106-107.) Moreover, the current judge issued a decision on Mr. Brown's case as early as February 2, 2016. (R., pp.25-28.) Mindful of the deadlines set forth under Rule 35(a)(2), Mr. Brown asserts his motion to disqualify should have been granted as a matter of right. The district court therefore erred in denying his motion for disqualification without cause.

III.

The District Court Abused Its Discretion In Denying Mr. Brown's Motion To Withdraw His Sentence

Mr. Brown's last challenge is to the district court's denial of his motion to withdraw his guilty plea. Pursuant to Idaho Criminal Rule 33(c), a defendant may make a motion to withdraw a guilty plea at any time prior to sentencing, or, if after the sentencing, only to correct manifest injustice. The initial step in analyzing whether to grant a motion to withdraw a guilty plea is to

determine whether the plea is knowing, intelligent and voluntary. *State v. Anderson*, 156 Idaho 230 (Ct. App. 2014). Mindful of *State v. Jakoski*, 139 Idaho 352 (2003), Mr. Brown asserts a district court may permit a defendant to withdraw his plea in order to correct manifest injustice, and here, Mr. Brown's attorney was ineffective for advising Mr. Brown to plead guilty when counsel knew or should have known there was no factual basis for the key elements relating to cohabitation and whether the crime was committed in the presence of a child. (R., p.102.) Mr. Brown attested that had counsel informed him that the State would have to prove at trial those requisite elements, he would not have plead guilty but rather gone to trial. (R., p.103.) He asserts he was factually innocent of the crime of domestic violence in the presence of a child, given the lack of requisite relationship. (R., pp.92-100.) In sum, his attorney was ineffective for instructing him to plead guilty to a charge for which he had a valid affirmative defense, and the district court abused its discretion and should have granted his motion to withdraw his plea to correct this manifest injustice.

CONCLUSION

Based upon the foregoing arguments, Mr. Brown requests this Court to vacate the district court's orders denying his motion to withdraw, his motion to disqualify the judge without cause, and his Rule 35(a) motion to correct an illegal sentence, and remand the matter back to the trial court for further proceedings.

DATED this 30th day of August, 2018.

/s/ Lara E. Anderson
LARA E. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

LEA/eas