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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45922
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2008-62
)	
ARMANDO GARCIA,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

In 2009, Garcia pled guilty to trafficking in heroin (seven grams or more, but less than 28 grams) and the district court imposed a unified sentence of 30 years, with 15 years fixed. (R., pp.13, 29-30.) Garcia filed a timely Rule 35 motion for reduction of sentence and a motion to

withdraw his guilty plea, both of which the district court denied. (R., p.30.) Garcia appealed and, on June 6, 2011, the Idaho Court of Appeals affirmed the district court's orders denying his Rule 35 motion and his motion to dismiss on the grounds of vindictive prosecution. State v. Garcia, 2011 Unpublished Opinion No. 504, Docket No. 37142 (Idaho App., June 6, 2011).

On November 29, 2017, Garcia filed a Rule 35 motion for correction of an illegal sentence, claiming that his sentence was illegal because “the District Court was mandated to impose a fixed term that was ‘consistent’ with that ten year mandatory minimum term.” (R., pp.17-23.) The district court denied the motion, correctly concluding that Garcia's sentence is “consistent with the unified sentencing structure set forth by the legislature in [I.C. §] 19-2513, and it's also consistent with the applicable statute that uses the term that the mandatory minimum fixed term of imprisonment of ten years is the minimum that the court could consider. ... That language does not say that the mandatory fixed term is ten years.” (R., pp.42-43; 3/16/18 Tr., p.11, L.14 – p.12, L.4.) Garcia 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.44-46.)

Mindful of legal authority to the contrary, Garcia asserts that the district court erred by denying his Rule 35 motion for correction of an illegal sentence “because the fixed portion of his sentence (fifteen years) exceeded the mandatory minimum (ten years), in contravention of Idaho Code § 19-2513(2).” (Appellant's brief, pp.3-4 (parenthetical notations original).) Garcia 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).

As Garcia was repeatedly advised, and repeatedly acknowledged, at the time that he entered his guilty plea (9/14/09 Tr., p.207, Ls.7-13; p.211, L.23 – p.212, L.7; p.219, L.13 – p.220, L.4), trafficking in heroin (seven grams or more, but less than 28 grams) carries a mandatory *minimum* fixed term of 10 years in prison, and the *maximum* sentence for trafficking in heroin (seven grams or more, but less than 28 grams) is life in prison. I.C. §§ 37-2732B(a)(6)(B), -2732B(a)(6)(D). The district court specifically told Garcia, “I could impose any sentence up to the maximum. ... I must impose *at least* the mandatory minimum[]. In other words, I must sentence you to *at least* ten years in the State penitentiary” (9/14/09 Tr., p.220, L.19 – p.221, L.4 (emphasis added)), and Garcia acknowledged that he understood (9/14/09 Tr., p.220, L.23; p.221, L.6). Garcia’s unified sentence of 30 years, with 15 years fixed, falls well within the statutory guidelines. (R., pp.13, 29-30.)

Garcia nevertheless argues that his sentence is illegal because the 15-year fixed portion of his sentence exceeds the mandatory minimum fixed term of 10 years required by statute, claiming that, “under the plain language of [I.C. § 19-2513(2)], the minimum period of confinement cannot exceed the mandatory minimum.” (Appellant’s brief, pp.3-4.) However, as Garcia acknowledges on appeal (Appellant’s brief, pp.1, 4), such an argument has already been rejected in State v. Ramsey, 159 Idaho 635, 364 P.3d 1200 (Ct. App. 2015). As explained in Ramsey, Idaho Code section 19-2513 does not require a court to impose a fixed term of *exactly* the mandatory minimum provided by statute; rather, the court may impose a sentence “of any

duration” between the mandatory minimum fixed term and the maximum term authorized by statute. Id. at 636-37, 364 P.3d at 1201-02. Idaho Code section 19-2513 gives the district court discretion to determine what portion of the sentence *in excess of* the mandatory fixed term will be fixed. State v. Griffith, 157 Idaho 409, 410, 336 P.3d 816, 817 (Ct. App. 2014). As such, the district court was authorized, in its discretion, to determine what portion of Garcia’s sentence *in excess of* the mandatory minimum 10-year fixed term would be fixed, with a maximum allowable fixed sentence of life in prison. I.C. §§ 19-2513, 37-2732B(a)(6)(B), -2732B(a)(6)(D); Griffith, 157 Idaho at 410, 336 P.3d at 817. Garcia’s unified sentence of 30 years, with 15 years fixed, is, therefore, consistent with the applicable statutes and is not an illegal sentence.

Because Garcia’s sentence falls within the statutory guidelines, and because the sentence is not otherwise contrary to applicable law, Garcia 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 Garcia’s Rule 35 motion for correction of an illegal sentence.

DATED this 19th day of November, 2018.

/s/ Lori A. Fleming
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of November, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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/s/ Lori A. Fleming
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