

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  
E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45958
Plaintiff-Respondent,	)	
	)	Canyon County Case No.
v.	)	CR-2011-16819
	)	
LORENZO ASTORGA CORRAL,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Corral failed to establish that the district court erred by denying his Idaho Criminal Rule 35(a) motion for correction of an illegal sentence?

Corral Has Failed To Show The District Court Erred In Denying His Idaho Criminal Rule 35(a) Motion For Correction Of An Illegal Sentence

Corral was convicted of conspiracy to commit murder and conspiracy to commit first degree kidnapping, and the district court imposed concurrent, unified sentences of life, with 20 years fixed, for conspiracy to commit murder, and 25 years, with five years fixed, for conspiracy to commit first degree kidnapping. (R., pp.28-29.) The Idaho Court of Appeals affirmed the

judgment and sentences, as well as the district court's order denying Corral's I.C.R. 35 motion for reduction of sentences. (R., pp.28-30.)

In 2018, Corral filed an I.C.R. 35(a) "Motion For Correction Of Illegal Sentencing By Means Of Violations Of Sentencing Procedure And PSI Consideration," which the district court denied. (R., pp.97-101, 152-57.) Corral filed a notice of appeal, timely from the district court's order denying his Rule 35(a) motion. (R., pp.162-65.)

Mindful of controlling precedent and "the fact that Mr. Corral's motion involved questions of fact surrounding the manner the sentence was imposed," Corral nevertheless argues on appeal that the district court erred by denying his motion for correction of his sentence because, according to Corral, "he was not informed that he could refuse to participate in the PSI and would not have participated had he been properly informed and he asserts that this made the sentencing process fundamentally unfair." (Appellant's brief, pp.2-3.) Corral has failed to show error in the denial of his I.C.R. 35(a) motion.

Pursuant to Idaho Criminal Rule 35(a), 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). 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).

Corral's claim that the district court erred by denying his motion for correction of an illegal sentence is without merit. As noted by the district court in its order denying Corral's Rule 35(a) motion, and as acknowledged by Corral on appeal, "Corral's motion challenge[d] the manner in which his sentence was imposed, not whether the sentence was authorized by law." (R., p.155.) Moreover, to the extent Corral's motion rested on his assertion that he received ineffective assistance of counsel in the sentencing process, such claim was outside the scope of a Rule 35(a) motion. See, e.g., State v. Wolfe, 158 Idaho 55, 65, 343 P.3d 497, 507 (2015) ("Rule 35's purpose is to allow courts to correct illegal sentences, *not* to reexamine errors occurring at trial or before the imposition of the sentence." (emphasis original)). Because Corral's Rule 35(a) motion failed as a matter of law, he has failed to show the district court erred by denying it.

#### Conclusion

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

DATED this 20th day of November, 2018.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th 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:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us).

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