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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45991
Plaintiff-Respondent,)	
)	BANNOCK COUNTY NO. CR-2014-14488
v.)	
)	
JORDAN JAMES AMUNDSEN,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jordan Amundsen appeals from the district court’s order denying his motion to correct an illegal sentence. Mr. Amundsen contends the district court erred when it denied his I.C.R. 35(a) motion to correct an illegal sentence because the district court did not have subject matter jurisdiction to impose his sentence. Mindful of *State v. Wolfe*, 158 Idaho 55, 65 (2015) (holding that an illegal sentence is one that is illegal from the face of the record, does not involve significant questions of fact, and does not require an evidentiary hearing) and *State v. Branigh*, 155 Idaho 404, 412 (Ct. App. 2013) (holding mere judicial error does not divest a court of

subject matter jurisdiction), Mr. Amundsen asserts that the district court lacked subject matter jurisdiction because a redacted Presentence Investigation (PSI) was required and a new sentencing hearing, with a different judge, should have been ordered for Mr. Amundsen.

Statement of the Facts & Course of Proceedings

In 2015, Mr. Amundsen pled guilty of one count of battery on detention center staff, pursuant to a plea agreement binding on the district court. (R., pp.163-174.) He was sentenced to five years, with two years fixed, but the sentence was suspended and he was placed on probation for four years. (R., pp.185-190.) Mr. Amundsen did not appeal from his judgment of conviction. (R., pp.7-9.)

In 2016, the State filed a report of probation violation alleging that Mr. Amundsen had used heroin, had changed his residence without the permission of his probation officer, and had failed to report to his probation officer. (R., pp.195-197.) After Mr. Amundsen admitted to violating some of the terms and conditions of his probation, the district court retained jurisdiction. (R., pp.203-208.) After the period of retained jurisdiction, the district court relinquished its jurisdiction over Mr. Amundsen. (R., pp.210-213.) Thereafter, Mr. Amundsen filed a Rule 35 motion from the order relinquishing jurisdiction.¹ (R., pp.214-215.) In the motion, Mr. Amundsen requested a reduction of his sentence. (R., pp.214-215.) The district court denied the motion after a hearing. (R., pp.222-223.)

Mr. Amundsen then filed a motion seeking relief under I.C.R. 35(a), asserting that the district court lacked jurisdiction to impose his sentence due to constitutional violations during sentencing. (R., pp.224-227.) Mr. Amundsen asserted that he was going through physical

¹ The motion was untimely; however, the district court accepted the filing and decided the motion on the merits, over the State's objection. (R., p.221.)

withdrawals from his opiate medication and was in a state of delirium and psychosis—unable to differentiate reality from fantasy. (R., pp.226-227, 238.) He entered a blackout phase and, when he came to, he was being held by four inmates and was told that he just choked a guard with a jumpsuit. (R., p.227.) Despite not remembering what had happened, Mr. Amundsen’s counsel told him that if he took the case to trial and lost, he was facing five years in a maximum-security prison. (R., p.228.) Because of this representation, Mr. Amundsen pled guilty. (R., p.228.) Mr. Amundsen believes his counsel coerced him to plead guilty, constituting ineffective assistance of counsel, which resulted in a plea under duress, which rendered it involuntary. (R., pp.228, 235-240, 252.) He asserts that an involuntary plea is considered void. (R., p.249.) Mr. Amundsen also asserts that his Constitutional rights were violated when the court failed to order an MRI and a neuropsychological examination prior to sentencing. (R., pp.228-232.) Mr. Amundsen claims that the district court violated his Eighth Amendment right to equal protection by failing to order these evaluations. (R., p.229.) He also asserted violations of his Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights to due process by the court, the prosecutor, and defense counsel. (R., pp.234-236.) Finally, Mr. Amundsen asserted that a motion made pursuant to I.C.R. 35(a) is a collateral proceeding, and asserted that the time limitation on all collateral review motions should be tolled. (R., pp.237, 242-247.)

Mr. Amundsen filed a motion for an evidentiary hearing. (R., p.256.) Mr. Amundsen also filed a motion, and affidavit in support, seeking to redact all of the statements he made to the presentence investigator from the PSI, and alternatively moved the district court to voluntarily disqualify itself. (R., pp.262-268.) He filed a motion and a supporting memorandum seeking a neuropsychological examination. (R., pp.271-277.)

The district court denied Mr. Amundsen's motion to disqualify pursuant to I.C.R. 25(a)(4) as being untimely filed. (R., pp.278-280.) The district court denied Mr. Amundsen's motion to redact the PSI and motion for voluntary disqualification. (R., pp.281-286.) The district court ruled that the protections of the Fifth Amendment were not triggered during the "routine" PSI process, and the Idaho Criminal Rules did not compel participation in the PSI process so Mr. Amundsen's statements were necessarily voluntary, and further, he did not claim any privilege. (R., pp.282-283.) The court noted that Mr. Amundsen claimed his counsel never informed him that he had a right to remain silent even after entering a guilty plea but that the PSI was not a critical stage of the litigation, "[I]f the stage is not critical, there can be no constitutional violation, no matter how deficient counsel's performance." (R., p.284.) The court reviewed the change of plea hearing and determined that it had not told Mr. Amundsen that he would lose his right to remain silent if he pled guilty. (R., pp.294-295.)

The district court denied Mr. Amundsen's Rule 35(a) motion. (R., pp.287-291.) In denying the motion, the court noted that Rule 35(a) only permits the court to consider a motion to correct an illegal sentence if they do not involve significant questions of fact or require the court to conduct an evidentiary hearing. (R., p.289.) The court thereafter found the sentence was not illegal from the face of the record, so it proceeded to analyze the motion under Rule 35(b), a motion for leniency. (R., pp.289-290.) The court noted that the defects Mr. Amundsen claims—(1) that the court should have administered a psychological examination; (2) that he was prejudiced by the ineffective assistance of counsel; (3) that he was the victim of prosecutorial misconduct; and (4) that his plea was involuntarily made—would require an examination beyond the face of the record; thus, these assertions of error may only be addressed under Rule 35(b), and such motion was untimely. (R., pp.290-291.)

Mr. Amundsen timely appealed from the orders denying his Rule 35 motion, his motion to disqualify, his motion to redact the PSI, and his motion for voluntary disqualification.² (R., pp.293-333.)

ISSUE

Did the district court err when it denied Mr. Amundsen's Motion To Correct An Illegal Sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Amundsen's Motion To Correct An Illegal Sentence

A. Introduction

Mr. Amundsen asserts that the district court erred when it denied his motions. Mindful of the decisions in *State v. Wolfe*, 158 Idaho 55, 65 (2015) (holding that an illegal sentence is one that is illegal from the face of the record, does not involve significant questions of fact, and does not require an evidentiary hearing) and *State v. Branigh*, 155 Idaho 404, 412 (Ct. App. 2013) (holding mere judicial error does not divest a court of subject matter jurisdiction), Mr. Amundsen asserts that the district court erred by denying his motion to correct an illegal sentence.

Mr. Amundsen respectfully requests that this Court vacate the order denying his motion to correct an illegal sentence and order that his case be remanded to a different district court judge with instructions to order the PSI redacted, to order a psychological evaluation, and to resentence him.

² This Appellant's Brief will address the district court's error in denying the Rule 35(a) motion, as it is the dispositive issue.

B. Standard Of Review

Idaho Criminal Rule 35(a) permits a district court to correct an illegal sentence at any time. *State v. Clements*, 148 Idaho 82, 84 (2009). “[T]he term ‘illegal sentence’ under I.C.R. 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.” *Id.* at 86. Generally, whether a sentence is illegal or was imposed in an illegal fashion is a question of law, over which an appellate court exercises free review. *Id.* at 84.

The question of whether the district court lacked subject matter jurisdiction is a question of law that this Court reviews *de novo*. *State v. Jones*, 140 Idaho 755, 757 (2004). The issue of whether the district court had subject matter jurisdiction over a case can be raised at any time, including for the first time on appeal or in an I.C.R. 35(a) motion to correct an illegal sentence. *Id.* at 758; *see State v. Lute*, 150 Idaho 837, 838-39 (2011) (holding that the court properly had jurisdiction to consider defendant’s I.C.R. 35 motion to correct an illegal sentence).

C. The District Court Erred When It Denied Mr. Amundsen’s Motion To Correct An Illegal Sentence

It is Mr. Amundsen’s contention that he is entitled to a resentencing because the trial court imposed a sentence that is illegal on the face of the record where the constitutional violations divested the court of jurisdiction. (R., p.241.)

Idaho Criminal Rule 35(a) permits a district court to correct an illegal sentence at any time. *State v. Clements*, 148 Idaho 82, 84 (2009). “[T]he term ‘illegal sentence’ under I.C.R. 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.” *Id.* at 86. Generally,

whether a sentence is illegal or was imposed in an illegal fashion is a question of law, over which an appellate court exercises free review. *Id.* at 84.

The entry of a valid guilty plea ordinarily waives all non-jurisdictional defects. *State v. Kelchner*, 130 Idaho 37, 39 (1997). “[J]udgments and orders made without subject matter jurisdiction are void and ‘are subject to collateral attack, and are not entitled to recognition in other states under the full faith and credit clause of the United States Constitution.’” *State v. Lute*, 150 Idaho 837, 840 (2011) (quoting *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 626-27 (1978)); see also *State v. Mowrey*, 91 Idaho 693, 695 (1967); *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 77 (1988) (holding “[t]he distinction between subject-matter jurisdiction and waivable defenses is not a mere nicety of legal metaphysics. It rests instead on the central principle of a free society that courts have finite bounds of authority, some of constitutional origin, which exist to protect citizens from the very wrong asserted here, the excessive use of judicial power. The courts, no less than the political branches of the government, must respect the limits of their authority.”); *State v. Peterson*, 149 Idaho 808, 810 (Ct. App. 2010); *State v. Taylor*, 142 Idaho 30, 31-32 (2005) (holding that upon expiration of the statutorily authorized time period, the court loses jurisdiction to place the prisoner on probation).

In *Lute*, the Idaho Supreme Court held that the court properly had jurisdiction to consider the defendant’s I.C.R. 35 motion, even though it was filed nearly fifteen years after he was indicted for the offenses. 150 Idaho at 838-39. The Court found that in cases where it is apparent that there is an issue concerning subject matter jurisdiction, the Court has the authority to address that issue. *Id.* 150 Idaho at 840. The *Lute* Court held that the district court never had subject matter jurisdiction over the defendant’s case because the grand jury never issued a valid indictment. *Id.* at 841. The Court reversed the district court’s denial of the defendant’s I.C.R. 35

motion for correction of an illegal sentence and remanded the case with instructions to grant the I.C.R. 35 motion and vacate the conviction. *Id.*

Similarly, Mr. Amundsen asserts that the district court's denial of his request to redact the PSI and subsequent sentencing allowed for a fundamental defect, which denied him due process. (R., p.294.)

A charging document confers jurisdiction if it alleges that the defendant committed a criminal offense within the State of Idaho. *State v. Severson*, 147 Idaho 694, 708 (2009); *State v. Jones*, 140 Idaho 755, 757-58 (2004). A court's jurisdiction does not continue forever. *State v. Jakoski*, 139 Idaho 352, 354 (2003). "Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal." *Id.* at 355 (footnote omitted). "Subject matter jurisdiction is the power to determine cases over a general type or class of dispute." *State v. Jensen*, 149 Idaho 758, 761 (Ct. App. 2010) (quoting *Bach v. Miller*, 144 Idaho 142, 145 (2007)).

Subject matter jurisdiction has been explained as:

"Jurisdiction over the subject matter" has been variously defined as referring to (1) the nature of the cause of action and of the relief sought; (2) the class of cases to which the particular one belongs and the nature of the cause of action and of the relief sought; (3) the power of a court to hear and determine cases of the general class to which the particular one belongs; (4) both the class of cases and the particular subject matter involved; and (5) the competency of the court to hear and decide the case. However, subject matter jurisdiction does not depend on the particular parties in the case or on the manner in which they have stated their claims, nor does it depend on the correctness of any decision made by the court. Also, the location of a transaction or controversy usually does not determine subject matter jurisdiction.

State v. Rogers, 140 Idaho 223, 227-28 (2004) (quoting 20 Am. Jur. 2D *Courts* § 70 (1995)).

The Idaho Supreme Court has stated that once subject matter jurisdiction is acquired, it continues

until some event ends the power. *State v. Rogers*, 140 Idaho 223, 228 (2004); *Jensen*, 149 Idaho at 761.

Mr. Amundsen asserts that the district court erred in denying his motion to correct an illegal sentence. As he asserted in his pro se brief:

The district court clearly lacked subject matter jurisdiction to proceed and sentence defendant with a faulted procedure in obtaining a PSI, in strict violation of appellants 14th Amendment protection to his Due Process.

(R., pp.321-323.)

Mr. Amundsen cited to *State v. Izaguirre*, 145 Idaho 820, 823 (Ct. App. 2008) (holding that the order denying Izaguirre's request for a neurocognitive evaluation must be reversed and that his sentence must be vacated and a resentencing be conducted), in support of his assertion that the necessary procedure in this case was for the PSI to be redacted, as Mr. Amundsen requested, and a neuropsychological report prepared for the resentencing hearing. (R., pp.321-322.) Mr. Amundsen asserted that, at sentencing, neither defense counsel nor the district court advised Mr. Amundsen that he could assert his constitutional right to silence pursuant to the Fifth Amendment instead of speaking to the PSI investigator and completing the PSI questionnaire. (R., p.322.)

As Mr. Amundsen asserted in his pro se brief:

The fact that now appellant has the right to a Confidential Neuropsychological Examination at Public Expense, and the fact that District Court violated Appellants fourteenth amendment right to Due Process, *not once but now twice*, under the protections of the United States Constitution, saying nothing of Sixth Amendment violations, such violations that also result in *federal authority, statute, and constitution violations*, such violations by any State including Idaho, will be *noted* because they now rise to the level of a "*fundamental defect*," and is *inconsistent with the rudimentary demands of fair procedure*. These said violations are of a *constitutional magnitude, if ignored*, and are *cognizable* because on "Court Appointed Appellate Attorney by this Court will review the entire record and should locate and discover that it shows such violations alleged herein and is proper before this court, and that those violations created

fundamental unfairness, that violated this Appellants Fourteenth Amendment Right to due Process, to fail to address would violate the equal application of fairness to the 8th amendment and more importantly only *preserve an on going prejudice*.

(R., p.322.) (emphasis in original) (sic).

Although this circumstance does not fall within the group of cases in which the appellate courts have previously found to divest the district court of subject matter jurisdiction, Mr. Amundsen requests that his case be dismissed for lack of jurisdiction due to the errors at his sentencing hearing. Mindful of the Idaho Supreme Court's decisions in *Wolfe* and *Branigh*, Mr. Amundsen asks that this Court reverse the denial of his motions and remand the case to the district court with instructions to grant his Rule 35(a) motion and dismiss the case due to lack of subject matter jurisdiction.

CONCLUSION

Mr. Amundsen respectfully requests that this Court remand the matter with instructions to dismiss his case due to lack of subject matter jurisdiction.

DATED this 15th day of November, 2018.

/s/ Sally J. Cooley
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 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

SJC/eas