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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45970
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR-FE-2013-12168
v.)	
)	
QUINN GARNER SIMMONS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Quinn Garner Simmons appeals from the district court's order denying his Idaho Criminal Rule (*hereinafter*, Rule) 35 motion to correct an illegal sentence.

Statement of the Facts & Course of Proceedings

In 2014, Mr. Simmons entered an *Alford*¹ plea to aggravated battery. (R., No. 42796, pp.83-90.)² The district court sentenced Mr. Simmons to a unified sentence of ten years, with three years fixed. (R., No. 42796, pp.105-109.)

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

In 2018, Mr. Simmons filed a Motion For Correction Of Illegal Sentencing By Means of Violations of Sentencing Procedure And PSI Consideration. (R., p.84.) He asserted that the sentencing procedure in his case violated his rights pursuant to the Fifth, Sixth, and Fourteenth Amendment to the Constitution of the United States. (R., p.85.) Specifically, he asserted that he was not told by counsel that he did not have to speak with the Presentence Investigator. (R., p.85.) He therefore asserted that he should be granted a new PSI and a new sentencing hearing with newly appointed counsel. (R., p.87.)

Mr. Simmons also filed a motion to redact his statements in the PSI due to the Fifth Amendment violation in his case. (R., p.89.) In a supporting affidavit, Mr. Simmons asserted that he would have asserted his right to remain silent during the PSI if he had known he had that right. (R., p.92.) Mr. Simmons then moved for a confidential neuropsychological examination at public expense. (R., p.93.) He submitted that an evaluation would produce evidence of frontal lobe immaturity which would warrant a reduced sentence. (R., p.96.)

The district court denied the motions. (R., p.136.) With regard to his participation in the PSI, the court ruled that “the PSI does not contain any material information originating from Mr. Simmons himself that would tend to prejudice Mr. Simmons in the sentencing process.” (R., p.137.) Therefore, the court ruled that Mr. Simmons was not prejudiced by the failure of his attorney to advise him of his constitutional rights. (R., p.138.) With regard to the motion for a neuropsychological examination, the court ruled that Mr. Simmons had received a mental health evaluation at sentencing and that he was 43 years old at the time of the incident, so there was no

² This Court has augmented the record in this case with the record in *State v. Simmons*, Docket No. 42796, which was an appeal from the judgment of conviction. (R., p.2.)

reason to believe that information involving frontal lobe immaturity would lead any court to reduce Mr. Simmons's sentence. (R., p.138.)

Mr. Simmons appealed. (R., p.141.)

ISSUE

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

ARGUMENT

The District Court Erred When It Denied Mr. Simmons's Rule 35 Motion To Correct An Illegal Sentence

Pursuant to Rule 35, a district court "may correct a sentence that is illegal from the face of the record at any time." I.C.R. 35(a). "Generally, whether a sentence is illegal or whether it was imposed in an illegal manner is a question of law over which" appellate courts exercise free review. *State v. Farwell*, 144 Idaho 732, 735 (2007) The Idaho Supreme Court has held "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). A defendant may challenge subject matter jurisdiction in a Rule 35 motion. *State v. Lute*, 150 Idaho 837 (2011). More recently, the Idaho Supreme Court clarified that "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." *State v. Wolfe*, 158 Idaho 55, 65 (2015).

Mindful of *Clements* and *Wolfe*, Mr. Simmons asserts that the district court erred when it denied his Rule 35(a) motion because his counsel failed to inform him that he did not have to participate in the PSI interview. Regardless of the nature of the statements made to the

investigator, Mr. Simmons asserts that this amounted to a denial of his right to counsel and violated his rights pursuant to the Fifth, Sixth, and Fourteenth Amendments. He also submits that, due to these violations, the district court lacked subject matter jurisdiction when it sentenced him. As such, the district court erred when it denied his motion to correct an illegal sentence.

CONCLUSION

Mr. Simmons respectfully requests that this Court vacate the district court's order denying his motion to correct an illegal sentence and remand the case for further proceedings.

DATED this 21st day of November, 2018.

/s/ Justin M. Curtis
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

JMC/eas