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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45991
Plaintiff-Respondent,)	
)	Bannock County Case No.
v.)	CR-2014-14488
)	
JORDAN JAMES AMUNDSEN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

In November 2015, pursuant to a binding Rule 11 plea agreement, Amundsen pled guilty to battery on detention staff and the parties stipulated to “no more than probation with an underlying suspended sentence of two years fixed, and three years indeterminate.” (R., pp.163-

77 (parenthetical notations omitted.) The district court followed the plea agreement and imposed a unified sentence of five years, with two years fixed, suspended the sentence, and placed Amundsen on supervised probation for four years. (R., pp.185-90.)

Approximately two months later, Amundsen's probation officer filed a report of violation alleging that Amundsen had violated the conditions of his probation by using heroin, changing residences without permission, and failing to report for supervision. (R., pp.195-97.) Amundsen admitted the allegations and the district court revoked his probation, executed the underlying sentence, and retained jurisdiction. (R., pp.204-08.) Following the period of retained jurisdiction, on October 5, 2016, the district court entered an order relinquishing jurisdiction. (R., pp.210-13.) One hundred and forty-six days later, Amundsen filed an untimely Rule 35 motion for a reduction of sentence. (R., pp.214-15.) The district court entered an order denying the motion on March 15, 2017. (R., pp.222-23.)

Approximately eight months later, on November 6, 2017, Amundsen filed a Rule 35 motion for correction of an illegal sentence, which the district court denied. (R., pp.224-53, 287-92.) Amundsen 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.293-96.)

Mindful 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," that "mere judicial error does not divest a court of subject matter jurisdiction," and that "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," Amundsen nevertheless asserts that the district court erred by denying his Rule 35 motion for correction of an illegal sentence because "the district court did not have subject matter jurisdiction to impose his sentence" due to "errors

at his sentencing hearing.” (Appellant’s brief, pp.1, 5-10 (citing State v. Wolfe, 158 Idaho 55, 60, 343 P.3d 497, 502 (2015), and State v. Branigh, 155 Idaho 404, 412, 313 P.3d 732, 740 (Ct. App. 2013)).) Amundsen 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 was imposed in an illegal manner within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction. I.C.R. 35(b). The court may, however, correct a sentence that is “illegal from the face of the record at any time.” I.C.R. 35(a). Because these filing limitations are jurisdictional, the district court lacks jurisdiction to grant any motion requesting relief that is filed after the time limit proscribed by the rule. State v. Sutton, 113 Idaho 832, 748 P.2d 416 (Ct. App. 1987). Amundsen’s Rule 35(a) motion was filed 397 days after the district court entered its order relinquishing jurisdiction. (R., pp.210, 224.) Therefore, the district court had jurisdiction to consider only whether Amundsen’s sentence was illegal.

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).

Amundsen contends that his sentence is illegal because “the district court did not have subject matter jurisdiction to impose his sentence.” (Appellant’s brief, p.1.) He compares this case to State v. Lute, 150 Idaho 837, 841, 252 P.3d 1255, 1259 (2011) – wherein the Idaho Supreme Court reversed the district court’s denial of Lute’s Rule 35 motion for correction of an

illegal sentence after determining that the district court never had subject matter jurisdiction over Lute's case – stating that this case is similar because “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.” (Appellant’s brief, pp.7-8.) However, in Lute, the Idaho Supreme Court held that “the district court *never* properly had jurisdiction over the case” because “no valid indictment or information” was ever entered against Lute. Lute, 150 Idaho at 841, 252 P.3d at 1259 (emphasis added). Amundsen has not claimed that no valid charging document was entered against him or that the district court *never* had subject matter jurisdiction in this case. Instead, he asserts that the district court was divested of subject matter jurisdiction “due to the errors at his sentencing hearing,” claiming that he was not advised of his right to remain silent during the presentence investigation and that the district court should have ordered a neuropsychological examination and that the PSI be redacted prior to sentencing. (Appellant’s brief, pp.5-10.) As Amundsen acknowledges, however, “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” (Appellant’s brief, p.10), and “mere judicial error does not divest a court of subject matter jurisdiction” (Appellant’s brief, p.5 (citing Branigh, 155 Idaho at 412, 313 P.3d at 740)). See also State v. Rogers 140 Idaho 223, 227, 91 P.3d 1127, 1131 (2004) (subject matter jurisdiction does not depend on the correctness of any decision made by the court).

Furthermore, as stated by the district court in its order denying Amundsen’s motion for correction of an illegal sentence, “Rule 35(a) only allows the Court to address allegations [i]f they do not involve significant questions of fact or require the court to conduct an evidentiary hearing,” and “[a] challenge to the validity of the sentence, or a claim that a sentence was imposed in an illegal manner due to constitutional defects may not be brought under Rule 35(a).”

(R., p.289 (citing State v. Meier, 159 Idaho 712, 713, 366 P.3d 197, 198 (Ct. App. 2016)).) The district court correctly concluded that Amundsen's unified sentence of five years, with two years fixed, for battery on detention staff falls within the statutory limit and is not illegal from the face of the record. (R., p.289 (citing I.C. § 18-915(2)(b)).) Because Amundsen's sentence does not exceed the statutory maximum, and because the sentence is not otherwise contrary to applicable law, Amundsen 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 Amundsen's Rule 35 motion for correction of an illegal sentence.

DATED this 13th day of December, 2018.

/s/ Lori A. Fleming
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of December, 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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