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### State v. Bartlett Appellant's Brief Dckt. 46121

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 46121-2018
	)	
v.	)	ADA COUNTY NO. CR-FE-2001-1382
	)	
BILL RAY BARTLETT,	)	
	)	
Defendant-Appellant.	)	APPELLANT'S BRIEF
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Mindful of the applicable authorities, Bill Ray Bartlett asserts in this appeal that the district court erred when it denied his Idaho Criminal Rule 35(a) (Rule 35(a)) motion to correct an illegal sentence.

## Statement of the Facts and Course of Proceedings

Mr. Bartlett was found guilty of sexual abuse of a minor under sixteen, I.C. § 18-1506, with a persistent violator sentencing enhancement under I.C. § 19-2514. (R., p.86.)<sup>1</sup> The district court imposed a unified sentence of life imprisonment, with thirty years fixed. (R., p.86.) Mr. Bartlett appealed, and the Idaho Court of Appeals affirmed his judgment of conviction in an unpublished opinion, *State v. Bartlett*, No. 29431, 2004 Unpublished Opinion No. 493 (Idaho Ct. App. June 1, 2004). (R., p.86.)

Later, Mr. Bartlett filed a petition for post-conviction relief, and the district court dismissed the petition. (R., p.86.) Mr. Bartlett appealed, and the Court of Appeals affirmed the dismissal in an unpublished opinion, *Bartlett v. State*, No. 34260, 2008 WL 9471262 (Idaho Ct. App. Nov. 17, 2008). (R., p.86.)

Mr. Bartlett subsequently filed a Rule 35(a) motion to correct an illegal sentence, which the district court denied. (*See* R., p.86.) Mr. Bartlett appealed, and the Court of Appeals affirmed the denial of the motion in an unpublished opinion, *State v. Bartlett*, No. 42753, 2015 WL 5167917 (Idaho Ct. App. Sept. 4, 2015). (R., p.86.)

About three years later, Mr. Bartlett filed, pro se, another Rule 35(a) motion to correct an illegal sentence. (R., pp.16-20.) In the motion, Mr. Bartlett asserted he had not been told by his counsel that he did not have to speak with the presentence investigator. (*See* R., p.17.) Mr. Bartlett also filed, pro se, other motions including a motion to redact his presentence investigation report, a motion for telephonic hearing, a motion for status hearing, a motion for evidentiary hearing, a motion for transport, a motion for appointment of conflict counsel, a

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<sup>1</sup> The Idaho Supreme Court ordered the record on appeal here to be augmented with the record and transcripts from Mr. Bartlett's prior appeal, No. 42753. (R., p.2.) All citations to "R." refer to the 106-page Limited Clerk's Record prepared for this appeal. (*See* R., p.2.)

motion for forma pauperis, and a motion for a confidential neuropsychological examination at public expense. (*See R.*, pp.21-77.)

The State filed a State's Response to Defendant's Motion to Correct Sentence. (*R.*, pp.78-81.) The district court then issued a Second Order Denying Rule 35 Motion to Correct an Illegal Sentence. (*R.*, pp.82-89.) On the motion to correct an illegal sentence, the district court found that, when Mr. Bartlett was sentenced in 2003, sexual abuse of a minor under 16 was punishable by up to fifteen years in prison, and as a persistent violator of the law, Mr. Bartlett could have been sentenced up to life in prison. (*R.*, p.87.) The district court determined: "Accordingly, the Court was authorized to impose up to a life sentence. For purposes of Idaho Criminal Rule 35(a), Defendant's sentence was plainly authorized by statute, which conclusively demonstrates that the sentence is not illegal on the face of the record as required by Rule 35(a)." (*R.*, p.87.)

The district court determined the Rule 35(a) motion "is inappropriate for purposes of requesting a hearing on the factual issue Defendant raised." (*R.*, p.87.) Further, the district court determined: "Defendant's request is ultimately another attempt at post-conviction relief, arguing ineffective assistance of counsel. He previously filed a post-conviction action. These claims could have been raised in those proceedings. To the extent they were not, he has waived those claims. To the extent they were, it is *res judicata*." (*R.*, p.88.)

Additionally, the district court determined, "To the extent that Defendant is requesting a more lenient sentence, such request is untimely" under Idaho Criminal Rule 35(b). (*See R.*, p.88.) The district court also noted that, "in *State v. Hazelbaker*, 2008 WL 9469288 (Idaho Ct. App. 2008) (unpublished), the Court of Appeals specifically held that an attorney's

inadequate advice regarding a psychological evaluation does not render a sentence illegal.” (R., p.88.)

The district court, in summation, determined: “Defendant’s claims are improper post-conviction issues that should have been raised in prior post-conviction proceedings. Defendant’s sentence is not illegal from the face of the record, nor is there evidence tending to show that the sentence was excessive.” (R., p.88.) Thus, the district court denied the Rule 35(a) motion to correct an illegal sentence. (R., p.88.) The district court also denied Mr. Bartlett’s other motions. (*See* R., pp.82-86.)

Mr. Bartlett filed, pro se, a Notice of Appeal timely from the district court’s Second Order Denying Rule 35 Motion to Correct an Illegal Sentence. (R., pp.90-93.)

#### ISSUE

Did the district court err when it denied Mr. Bartlett’s Idaho Criminal Rule 35(a) motion to correct an illegal sentence?

#### ARGUMENT

##### The District Court Erred When It Denied Mr. Bartlett’s Idaho Criminal Rule 35(a) Motion To Correct An Illegal Sentence

Mindful of the applicable authorities, Mr. Bartlett asserts that the district court erred when it denied his Idaho Criminal Rule 35(a) motion to correct an illegal sentence.

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. *State v. Clements*, 148 Idaho 82, 84 (2009). Idaho Criminal Rule 35 provides that a district court “may correct a sentence that is illegal from the face of the record at any time.” I.C.R. 35(a). “[T]he 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.” *Clements*, 148 Idaho at 86. “[U]nder Rule 35, a trial court cannot examine the underlying facts of a crime to which a defendant pled guilty to determine if the sentence is illegal.” *State v. Wolfe*, 158 Idaho 55, 65 (2015) (citing *Clements*, 148 Idaho at 84-87). “Rule 35 inquiries must involve only questions of law—they may not include significant factual determinations to resolve the merits of a Rule 35 claim. If a district court does inquire and make significant factual determinations, it exceeds its scope of authority under Rule 35.” *Id.* (citing *Clements*, 148 Idaho at 87-88).

Mindful of *Clements* and *Wolfe*, Mr. Bartlett asserts that the district court erred when it denied his Rule 35(a) motion to correct an illegal sentence. As Mr. Bartlett asserted in the Rule 35(a) motion, his sentence is illegal because his counsel never told him he did not have to speak with the presentence investigator. (*See R.*, pp.16-17.) Thus, the district court erred when it denied Mr. Bartlett’s Rule 35(a) motion to correct an illegal sentence.

#### CONCLUSION

For the above reasons, Mr. Bartlett respectfully requests that this Court vacate the district court’s denial of his Rule 35(a) motion to correct an illegal sentence, and remand the case to the district court for further proceedings.

DATED this 27<sup>th</sup> day of November, 2018.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27<sup>th</sup> 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

BPM/eas