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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46121
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2001-1382
)	
BILL RAY BARTLETT,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

In 2003, Bartlett was convicted of sexual abuse of a minor under the age of 16 years, with a persistent violator enhancement, and the district court imposed a unified sentence of life, with 30 years fixed. (R., pp.10, 86.) Bartlett appealed, and the Idaho Court of Appeals affirmed his

conviction and sentence. (R., p.86.) In 2008, Bartlett filed a petition for post-conviction relief alleging ineffective assistant of counsel at trial; the district court dismissed the petition and the Court of Appeals later affirmed the dismissal. (R., p.86.) In 2015, Bartlett filed a Rule 35 motion for correction of an illegal sentence. (R., p.86.) The district court denied the motion, and the Court of Appeals subsequently affirmed the denial of the motion. (R., p.86.) In 2018, Bartlett filed a second Rule 35 motion for correction of an illegal sentence, which the district court denied. (R., pp.16-20, 82-89.) Bartlett filed a notice of appeal timely from the district court's order denying his second Rule 35 motion for correction of an illegal sentence. (R., pp.90-93.)

Mindful of legal authority that forecloses his argument, Bartlett asserts on appeal that the district court erred by denying his second Rule 35 motion for correction of an illegal sentence, claiming as he did below that his sentence is illegal because his trial counsel "never told him he did not have to speak with the presentence investigator." (Appellant's brief, pp.4-5.) Bartlett has failed to show error in the denial of his second Rule 35 motion for correction of an illegal sentence.

Pursuant to Idaho Criminal Rule 35, 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).

Idaho Criminal 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). “[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, 343 P.3d 497, 507 (2015) (citations omitted). “Moreover, 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.” Id. (emphasis original).

The penalty for sexual abuse of a minor under the age of 16 years, with a persistent violator enhancement, is not less than five years, up to life in prison. I.C. §§ 18-1506, 19-2514. Bartlett’s unified sentence of life, with 30 years fixed, falls within the statutory guidelines. Bartlett claims that his sentence is illegal “because his counsel never told him he did not have to speak with the presentence investigator.” (Appellant’s brief, p.5.) Bartlett’s claim is not the proper subject of a Rule 35(a) motion, as he does not allege that his *sentence* is in excess of a statutory provision or otherwise contrary to applicable law; rather, he claims that his counsel committed error *before the imposition of sentence*. The alleged error is therefore not within the scope of Rule 35(a). See, e.g., Wolfe, 158 Idaho at 65, 343 P.3d at 507.

Bartlett has not shown that his sentence is illegal, nor has he shown any other basis for reversal of the district court’s order denying his second Rule 35 motion for correction of an illegal sentence. Therefore, the district court’s order denying Bartlett’s second Rule 35(a) motion should be affirmed.

Conclusion

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

DATED this 21st day of December, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st 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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/s/ Lori A. Fleming
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