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IN THE SUPREME COURT OF THE STATE OF IDAHO.

STATE OF IDAHO,)
) No. 46134
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR01-2016-35619
)
 ARTURO GONZALES FLORES,)
)
 Defendant-Appellant.)
)
)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

**HONORABLE SAMUEL A. HOAGLAND
District Judge**

**LAWRENCE G. WASDEN
Attorney General
State of Idaho**

**PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division**

**KALE D. GANS
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov**

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

**ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us**

**ATTORNEY FOR
DEFENDANT-APPELLANT**

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STATEMENT OF THE CASE

Nature Of The Case

Arturo Gonzales Flores appeals from the district court's order denying his Rule 35 motion to correct a purportedly illegal sentence.

Statement Of The Facts And Course Of The Proceedings

Flores was charged with possession of heroin, possession of methamphetamine, and a persistent violator enhancement. (45188 R., pp.36-37, 51-52.) A jury found Flores guilty of both counts and the enhancement (45188 R., pp.154-55), and the district court sentenced him to concurrent sentences of 15 years imprisonment, with three years fixed on each count (45188 R., pp.213-16). Flores appealed from his judgment of conviction; the Court of Appeals affirmed, and a remittitur issued on January 23, 2019. State v. Flores, Docket No. 45188, 2018 Unpublished Opinion (filed November 30, 2018).

In the meantime, Flores filed a pro se Rule 35 motion to correct his sentence. (R., pp.11-25.) The district court determined Flores was making four arguments:

Defendant asserts the imposed sentence was illegal because (1) the Court lacked jurisdiction to punish him as a persistent violator at any time other than at the time of his third felony conviction, (2) the Uniform Controlled Substance Act's enhancement trumps Idaho's persistent violator enhancement when it comes to violations of Idaho Code § 37-2732(c), (3) jurisdiction to enforce Idaho Code § 19-2514 is isolated to crimes designated as a felony at the outset, and (4) Idaho Code § 19-2514 violates the due process and equal protection clauses of the state and federal constitutions.

(R., pp.27-28.)

All of these arguments, the district court concluded, were "without merit." (R., pp.28-30.) The court accordingly found that Flores's "sentence is not illegal from the

face of the record, nor is there new evidence tending to show that the sentence was excessive,” and denied the motion. (R., pp.30-31.) Flores timely appeals. (R., pp.33-36.)

ISSUE

Flores states the issue on appeal as:

Did the district court err in denying Mr. Flores' motion to correct an illegal sentence?

(Appellant's brief, p.3.)

The state rephrases the issue as:

Has Flores failed to show the district court erred in denying his motion to correct an allegedly illegal sentence?

ARGUMENT

The District Court Correctly Denied Flores's Motion To Correct His Sentence

A. Introduction

The district court correctly concluded Flores's sentence was legal and his claims to the contrary were meritless. (R., pp.28-31.) On appeal, "mindful of" all the authority contradicting his arguments, Flores nevertheless contends "[t]he district court erred in denying Mr. Flores' motion to correct an illegal sentence because Mr. Flores' sentence is illegal." (Appellant's brief, pp.4-6.) Because Flores fails to show any error the district court's order denying his motion should be affirmed.

B. Standard Of Review

Whether Rule 35(a) is implicated and whether a sentence is illegal are questions of law over which this Court exercises free review. See State v. Herrera, 164 Idaho 440, ___, 431 P.3d 275, 277 (2018); State v. Meier, 159 Idaho 712, 713, 366 P.3d 197, 198 (Ct. App. 2016).

C. The Record Plainly Establishes That Flores's Sentence Was Not Illegal

"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." State v. Jakoski, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003).

Idaho Criminal Rule 35(a) is a narrow rule that allows a trial court to correct a sentence that is illegal from the face of the record at any time. State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009). "[T]he term 'illegal sentence,' as utilized by

I.C.R. 35(a) 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, 218 P.3d at 1147. Rule 35(a) “is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal.” Id. (citation omitted). “[R]ather, the rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law or where new evidence tends to show that the original sentence was excessive.” Id.

In a detailed and well-reasoned opinion, the district court correctly applied these legal standards. (R., pp.27-31.) It found that (1) “Idaho case law is clear that [Idaho’s persistent violator enhancement] applies to the third and subsequent felony convictions”; (2) the persistent violator enhancement would not be trumped or overridden by the controlled substance enhancement found in I.C. § 37-2739; (3) the argument that the persistent violator enhancement “is isolated to crimes designated as [felonies] at the outset” failed, insofar as Flores was in fact “charged with two felonies ‘at the outset’ of [this] case”; and (4) Flores’s due process and equal protection arguments were “bare and conclusory,” not supported by the case law, and meritless. (R., pp.28-30.) The district court was correct, and the state adopts the court’s analysis from the “Order Denying Motion to Correct an Illegal Sentence Pursuant to I.C.R. 35” as part of its argument on appeal, a copy of which is attached herein as an appendix.

Flores’s sentence does not exceed any statutory provisions; neither is it contrary to applicable law. On appeal, Flores has failed to show any error in the district court’s denial of his Rule 35 motion to correct his sentence. The district court’s order denying the motion was correct and should be affirmed.

CONCLUSION

The state respectfully requests this Court affirm the district court's order denying Flores's Rule 35 motion.

DATED this 20th day of February, 2019.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of February, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

KDG/dd

APPENDIX A

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,
Plaintiff,

vs.

ARTURO GONZALES FLORES,
Defendant.

Case No. CR01-16-35619

ORDER DENYING MOTION TO
CORRECT AN ILLEGAL SENTENCE
PURSUANT TO I.C.R. 35

THIS MATTER comes before the Court on Defendant's Motion to Correct an Illegal Sentence, pursuant to Idaho Criminal Rule 35(a), filed *pro se* on May 25, 2018. For the reasons stated herein, the Motion is DENIED.

BACKGROUND

In 2016, Defendant was charged with two felony counts of possession of a controlled substance (heroin and methamphetamine). On April 19, 2017, a jury found Defendant guilty of both charges. The jury then found that the Defendant had two prior felony convictions for possession of a controlled substance and that he was a persistent violator of the law. On June 16, 2017, Defendant was sentenced to 15 years with the first three years fixed on count one and to 15 years with the first three years fixed on count two. Both sentences were set to run concurrent to one another.

Idaho Criminal Rule 35 is a narrow rule that allows a trial court to correct an illegal sentence or a sentence imposed in an illegal manner. I.C.R. § 35. If the sentence imposed is within the statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency and is left to the Court's sound discretion. *State v. Farwell*, 144 Idaho 732, 735, 170 P.3d 397, 400 (2007). "When presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007)."

To prevail on a Rule 35 motion, the defendant "must establish that, under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment, which are (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing." *State v. Knighton*, 143 Idaho 318, 319-20, 144 P.3d 23, 24-25 (2006); see *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000) (citations omitted) ("A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case.")

In this case, Defendant was convicted of two felony PCS charges and of being a persistent violator of the law in a jury trial and sentenced to 15 years with the first three years fixed on both charges. Defendant asserts the imposed sentence was illegal because (1) the Court lacked jurisdiction to punish him as a persistent violator at any time other than at the time of his third felony conviction, (2) the Uniform Controlled Substance Act's enhancement trumps Idaho's

persistent violator enhancement when it comes to violations of Idaho Code § 37-2732(c), (3) jurisdiction to enforce Idaho Code § 19-2514 is isolated to crimes designated as a felony at the outset, and (4) Idaho Code § 19-2514 violates the due process and equal protection clauses of the state and federal constitutions. Each argument will be addressed in turn.

Idaho Code § 19-2514 provides:

Any person convicted for the third time of the commission of a felony, whether the previous convictions were had within the state of Idaho or were had outside the state of Idaho, shall be considered a persistent violator of law, and on such third conviction shall be sentenced to a term in the custody of the state board of correction which term shall be for not less than five (5) years and said term may extend to life.

The term “conviction” means the establishment of guilt, either by a guilty plea or by a guilty verdict following a trial. *State v. Beavers*, 152 Idaho 180, 186, 268 P.3d 1, 7 (Ct. App. 2010) (citing *United States v. Sharp*, 145 Idaho 403, 404, 179 P.3d 1059, 1060 (2008)). Such an establishment of guilt occurs prior to punishment and is separate from the issuance of a judgment of conviction. *Id.* The plain language of Idaho Code § 19-2514 clearly demonstrates that, if it is established at the time of sentencing that the conviction for which the defendant is being sentenced is the third felony conviction for the defendant, the sentencing court shall apply a mandatory minimum fixed term of five years which may extend to life.

Here, Defendant was subject to a sentence enhancement for being a persistent violator for both felony PCS convictions. I.C. § 19-2514; *State v. Bates*, 63 Idaho 119, 117 P.2d 281 (1941) (finding that the defendant was a persistent violator under Idaho Code § 19-2514 on fourth felony conviction); *State v. Dixon*, 140 Idaho 301, 307, 92 P.3d 551, 557 (Ct. App. 2004) (affirming

sentencing enhancement for two subsequent convictions). While Defendant argues that the plain language of Idaho Code § 19-2514 applies solely and specifically to the third felony conviction, Idaho case law is clear that it applies to the third and subsequent felony convictions. *Bates*, 63 Idaho 119, 117 P.2d at 281 (“Obviously the legislature never intended by such statute that one would be a persistent violator upon the conviction of a third offense but not upon a fourth or any subsequent one.”). Accordingly, the Defendant’s argument that the Court erred in applying the sentencing enhancement to his fourth felony conviction is without merit.

Defendant next asserts that Idaho Code § 37-2739 trumps Idaho Code § 19-2514. Idaho Code § 37-2739(a) provides:

Any person convicted of a second or subsequent offense under this act, who is not subject to a fixed minimum term under section 37-2739B, Idaho Code, may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

There is no legal support for Defendant’s assertion that Idaho Code § 37-2739 must be applied in this case over Idaho Code § 19-2514. Instead, case law indicates that **both** sentencing enhancements can be charged. *State v. Beavers*, 152 Idaho 180, 268 P.3d 1 (Ct. App. 2010); *State v. Sittre*, 2008 WL 9468288 (Idaho Ct. App. 2008). Here, the State was authorized to charge Defendant as a persistent violator under Idaho Code § 19-2514 as the charges in this case were Defendant’s third and fourth felony violations. After Defendant was found guilty of both felony charges, the jury also found that he had two prior felony convictions. Accordingly, the Defendant’s argument that Idaho Code § 37-2739 must be applied in this case over Idaho Code § 19-2514 is without merit.

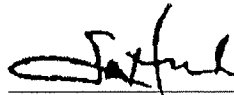
Defendant next asserts that jurisdiction to enforce Idaho Code § 19-2514 is isolated to crimes designated as a felony at the outset. He argues that his convictions did not constitute felonies until after the Court decided what type of sentence will be imposed.

“A felony is a crime which is *punishable* with death or by imprisonment in the state prison.” I.C. § 18-111 (emphasis added). Defendant was charged with possession of methamphetamine and heroin, which are both punishable by up to seven years in prison. *See* I.C. § 37-2732(c)(1). Accordingly, Defendant was charged with two felonies “at the outset” of his case, and his argument is without merit. *See* Information (filed Dec. 5, 2016).

Defendant’s final argument is that Idaho Code § 19-2514 violates the due process and equal protection clauses of the state and federal constitutions, because it fails to provide an increased fine in addition to the increased imprisonment penalty. He asserts that it violates the due process and equal protection clause because a sentencing enhancement statute must “provide enhancements with an even hand for both the fine and/or imprisonment.” Defendant cites no legal support or authority for this bare and conclusory assertion other than *State v. Breed*, 111 Idaho 497, 725 P.2d 202 (Ct. App. 1986), which does not support Defendant’s argument. In *State v. Breed*, the Court of Appeals held that Idaho Code § 18-8002 (the statute providing for an 120–day suspension of driving privileges for refusal to take blood alcohol test), which had no provision for limited driving privileges available to persons convicted of driving under the influence, did not violate equal protection principles. Therefore, Defendant’s argument that Idaho Code § 19-2514 violates the due process and equal protection clauses is without merit.

In sum, Defendant's sentence is not illegal from the face of the record, nor is there new evidence tending to show that the sentence was excessive. Accordingly, Defendant's Motion to Correct an Illegal Sentence is DENIED.

IT IS SO ORDERED dated Signed: 6/22/2018 05:55 PM.



SAMUEL A. HOAGLAND
District Judge

CERTIFICATE OF MAILING

I hereby certify that on Signed: 6/27/2018 12:41 PM, I mailed (served) a true and correct copy of the within instrument to:

Ada County Prosecutor
Interdepartmental Mail

Mr. Arturo Gonzales Flores #26389
South Idaho Correctional Institution, Main Dorm
P.O. Box 8509
Boise, Idaho 83707

Christopher Rich
Clerk of the District Court

By Stephanie Hardy
Deputy Court Clerk

