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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46149
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR-2010-6549
)	
JOSHUA LEROY CRAWFORD,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

In 2010, Crawford was charged with six counts of lewd conduct with a minor under the age of 16. (R., pp.27-31.) Pursuant to a plea agreement, Crawford pled guilty to an amended charge of felony injury to a child; the state agreed to dismiss the remaining charges; the parties agreed to recommend probation with an underlying unified sentence of 10 years, with five years fixed; and Crawford waived his right to “file a Rule 35 motion (except as to an illegal sentence)”

and his right to “appeal any issues in this case, including all matters involving the plea or the sentencing and any rulings made by the court, including all suppression issues” unless the district court exceeded the five-year determinate portion of the parties’ sentencing recommendation. (R., pp.38-41, 52 (parenthetical notation and emphasis original).) The district court imposed a unified sentence of 10 years, with three years fixed, and retained jurisdiction. (R., pp.75-82.) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.83-87.) Crawford filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.88-95.)

Approximately seven years later, Crawford filed a Rule 35 motion “for correction of illegal sentencing by means of violations of sentencing procedure and PSI consideration,” claiming that his sentence is illegal because “he was not told by counsel that he did not have to speak with the PSI investigator” and because the court should have ordered a confidential neuropsychological examination at public expense. (R., pp.152-56.) The district court denied the motion, finding that it lacked subject matter jurisdiction to consider the motion because the motion was not timely filed. (R., pp.162-65.) Crawford filed a notice of appeal timely from the denial of his of his Rule 35 motion “for correction of illegal sentencing by means of violations of sentencing procedure and PSI consideration.” (R., pp.166-69.)

Crawford asserts that the district court erred by denying his Rule 35 motion for correction of an illegal sentence as untimely. (Appellant’s brief, pp.3-4.) Crawford has failed to show any basis for reversal of the district court’s denial of his motion because his sentence is not illegal from the face of the record, and his claims of defects in the underlying proceedings do not fall within the scope of a motion for correction of an illegal sentence pursuant to Rule 35(a).

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). Crawford’s Rule 35(a) motion was filed more than six years after the district court entered its order relinquishing jurisdiction. (R., pp.83, 152.) Therefore, the district court had jurisdiction to consider only whether Crawford’s sentence was illegal from the face of the record.

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).

The state concedes the district court had jurisdiction to rule on a Rule 35(a) motion for correction of an illegal sentence. See I.C.R. 35(a) (“The court may correct a sentence that is illegal from the face of the record at any time.”). However, Crawford’s claims that “he was not told by counsel that he did not have to speak with the PSI investigator” and that the district court should have ordered a confidential neuropsychological examination at public expense (R.,

pp.152-56) are not the proper subject of a Rule 35(a) motion. On their face, the claims do not allege Crawford's *sentence* is in excess of a statutory provision or otherwise contrary to applicable law. Rather, they are claims that his counsel and/or the district court committed error *before the imposition of sentence*. The alleged errors are therefore not within the scope of Rule 35(a). See, e.g., State v. Wolfe, 158 Idaho 55, 65, 343 P.3d 497, 507 (2015) ("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.").

Crawford's unified sentence of 10 years, with three years fixed, for felony injury to a child falls within the statutory maximums permitted by law. See I.C. § 18-1501(3) (the maximum prison sentence for felony injury to a child is 10 years). Because Crawford's sentence falls within the statutory guidelines and is not in excess of a statutory provision or otherwise contrary to applicable law, he has failed to show that his sentence is illegal. Crawford has thus also failed to show any basis for reversal of the district court's order denying his Rule 35 motion "for correction of illegal sentencing by means of violations of sentencing procedure and PSI consideration."

Conclusion

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

DATED this 2nd day of January, 2019.

/s/ Lori A. Fleming
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of January, 2019, 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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