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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46149-2018
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY
v.)	NO. CR-2010-6549
)	
JOSHUA LEROY CRAWFORD,)	
)	
Defendant-Appellant.)	
<hr/>		

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS**

HONORABLE BENJAMIN J. CLUFF
District Judge

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Rules

Idaho Criminal Rule 35 1, 2, 3, 4

STATEMENT OF THE CASE

Nature of the Case

Joshua Leroy Crawford appeals from the district court's order denying the motion he filed pursuant to Idaho Criminal Rule 35(a). He contends the district court erred when it concluded it lacked jurisdiction to consider this motion because it was not timely filed.

Statement of Facts and Course of Proceedings

On April 12, 2011, Mr. Crawford was convicted of felony injury to child and was sentenced to a unified term of ten years, with three years fixed, with a period of retained jurisdiction. (R., pp.75-82.) The district court relinquished jurisdiction over Mr. Crawford on August 30, 2011. (R., pp.83-87.) On October 19, 2011, Mr. Crawford filed a motion pursuant to Idaho Criminal Rule 35(b) for reconsideration of sentence. (R., pp.88-90.) The district court denied Mr. Crawford's Rule 35(b) motion without a hearing. (R., pp.91-95.)

On June 8, 2018, Mr. Crawford filed, among other things, a pro se motion for correction of illegal sentence. (R., pp.251-56.) Mr. Crawford argued his sentence was illegal, and sought relief under Idaho Criminal Rule 35(a). (R., p.155.) The district court issued a written order on June 22, 2018, denying Mr. Crawford's various motions. (R., pp.162-65.) The district court concluded it lacked jurisdiction to consider Mr. Crawford's Rule 35 motion because it was not timely filed. (R., p.163.) Mr. Crawford filed a timely notice of appeal on July 10, 2018. (R., pp.166-69.)

ISSUE

Did the district court err when it concluded it lacked jurisdiction to consider Mr. Crawford's Rule 35 motion?

ARGUMENT

The District Court Erred When It Concluded It Lacked Jurisdiction To Consider Mr. Crawford's Rule 35 Motion

Mr. Crawford filed a motion pursuant to Idaho Criminal Rule 35(a) arguing his sentence was illegal because “he was not told by his counsel that he did not have to speak with the PSI investigator” (R., p.153.) Mr. Crawford stated in the first and last paragraphs of his motion that he was seeking relief pursuant to Rule 35(a). (R., pp.152, 155.) Rule 35(a) provides that “[t]he court may correct a sentence that is illegal from the face of the record at any time.”

Though Mr. Crawford specifically referenced Rule 35(a) in his motion, the district court treated his motion as if it sought relief under Idaho Criminal Rule 35(b). The district court stated that a motion made pursuant to Rule 35(b) must be filed within 120 days of the judgment of conviction. (R., p.162.) The district court concluded it lacked subject matter jurisdiction to consider Mr. Crawford's motion because it was filed 2,614 days after the entry of the judgment of conviction and 2,494 days after the 120-day period for filing a Rule 35(b) motion had passed. (R., p.163.)

“Whether a trial court had subject matter jurisdiction over a proceeding is an issue of law that this Court reviews de novo.” *State v. Wolfe*, 158 Idaho 55, 60 (2015). The district court erred in concluding it lacked subject matter jurisdiction to consider Mr. Crawford's motion because it erred in concluding it was not timely filed. While the motion would not have been timely if brought pursuant to Rule 35(b), it was timely under Rule 35(a). In an appeal from the denial of Rule 35(a) motion, the question of whether the sentence imposed is illegal is a question of law freely reviewable by the appellate court. *State v. Josephson*, 124 Idaho 286, 287 (Ct. App. 1993); *State v. Rodriguez*, 119 Idaho 895, 897 (Ct. App. 1991). Here, the district court did not consider whether the facts alleged by Mr. Crawford made his sentence illegal within the meaning

of Rule 35(a) because it only addressed the motion under Rule 35(b). This case should be remanded to the district court for it to consider the merits of Mr. Crawford's Rule 35(a) motion in the first instance.

CONCLUSION

Mr. Crawford respectfully requests that the Court vacate the district court's order denying his Rule 35(a) motion, and remand this case to the district court with instructions to consider the merits of that motion.

DATED this 4th day of December, 2018.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
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E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith
EVAN A. SMITH
Administrative Assistant

AWR/eas