

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46221
 Plaintiff-Respondent,)
) Canyon County Case No.
 v.) CR-2014-5985
)
 JAYSON LEE HOF,)
)
 Defendant-Appellant.)
)
)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

**HONORABLE DAVIS F. VANDERVELDE
District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Jayson Lee Hof appeals the denial of his motion to correct his sentence under Idaho Criminal Rule 35(a).

Statement Of The Facts And Course Of The Proceedings

In April of 2014, Jayson Lee Hof was charged with felony driving under the influence of alcohol and with two enhancements: (1) for having been convicted of felony driving under the influence of alcohol within the previous fifteen years, and (2) as a persistent violator under Idaho Code section 19-2514, for having been convicted of three felonies. (Aug.R., pp.14-19.¹) Part III of the information, addressed to the persistent violator enhancement, listed four prior felony convictions. (Aug.R., pp.18-19.)

Hof pled guilty to both the underlying conviction and the enhancements. (Aug.Tr., p.15, Ls.14-20; p.16, L.21 – p.17, L.2; p.17, Ls.15-19.) He was sentenced to a unified term of forty years with ten years fixed. (Aug.R., pp.41-42; Aug. Tr., p.31, Ls.11-21.) He timely appealed. (Aug.R., pp.48-49.) While that appeal was pending, he filed a motion under Idaho Criminal Rule 35 requesting leniency and asking the district court to reconsider its sentence. (R., pp.13-14.) That motion was denied. (R., pp.17-20.) In an unpublished opinion filed on July 17, 2015, the Idaho Court of Appeals affirmed Hof's

¹ In an Order Augmenting Appeal, issued August 6, 2018, this Court ordered that "the Record on Appeal be augmented to include the Clerk's Record and Reporter's Transcript filed in prior appeal No. 42443-2014, *State v. Hof* (Canyon County No. CR-2014-5985)." Following Hof, the state will refer to the record and transcript in the prior appeal as 'Aug.R.' and 'Aug.Tr.', respectively.

sentence. (R., pp.22-23 (State v. Hof, Docket No. 42443, Unpublished Opinion No. 555 (Idaho App., July 17, 2015)).)

More than two years later, acting pro se, Hof filed a second motion under Idaho Criminal Rule 35, making a variety of arguments purporting to show that his sentence is illegal. (R., pp.25-37.) Among other arguments not relevant to this appeal, Hof argued, “The District Court would only have had the ability to impose the Persistent Felony Offender designation upon the Petitioner on the THIRD felony conviction. NOT on ANY subsequent convictions, such as the Fourth, Fifth, or Sixth conviction.” (R., pp.33-34 (capitalization in original).) After the district court appointed Hof an attorney to assist with his motion (R., pp.38-39), that attorney filed a supplemental memorandum expanding on this argument (R., pp.50-53). Through his attorney, Hof argued that Idaho Code section 19-2514 provides that the persistent violator enhancement applies only to an offender’s third felony conviction, not any subsequent conviction. (Id.) After a hearing (see generally Tr., pp.12-18) the district court rejected this argument, noting that, “This argument was presented to the Idaho Supreme Court and rejected as without merit in *State v. Bates*, 63 Idaho 119, 117 Idaho P.2d 281 (1941)” (R., pp.59-60).

Hof timely initiated this appeal. (R., pp.62-65.)

ISSUE

Hof states the issue on appeal as:

Did the district court err in denying Mr. Hof's motion to correct his illegal sentence?

(Appellant's brief, p.6.)

The state rephrases the issue as:

Has Hof failed to show that the district court erred in denying his motion under Idaho Criminal Rule 35(a)?

ARGUMENT

The District Court Properly Denied Hof's Motion Under Idaho Criminal Rule 35(a)

A. Introduction

On appeal, Hof argues the district court erred in denying his motion under Rule 35(a) because he is not subject to the persistent violator enhancement under Idaho Code section 19-2514. According to Hof, the statute permits an enhancement only for a defendant's third felony conviction, not any subsequent conviction, and Hof had already reached that milestone by the time of his conviction in this case. (Appellant's brief, pp.9-10.)

That argument fails for two reasons. First, Hof pled guilty to the charge that he was a persistent violator subject to the persistent violator enhancement, waiving any argument that he is not a persistent violator subject to that enhancement. See Clark v. State, 92 Idaho 827, 833, 452 P.2d 54, 60 (1969) ("A valid plea of guilty, voluntarily and understandingly given, waives all non-jurisdictional defects and defenses, whether constitutional or statutory, in prior proceedings."). Having pled guilty, and having never filed a motion to withdraw his plea, he cannot collaterally attack that plea under the guise of a Rule 35(a) motion. Second, Hof's argument fails on its merits. The Idaho Supreme Court addressed and correctly rejected Hof's argument regarding Idaho Code section 19-2514 nearly eighty years ago in State v. Bates, 63 Idaho 119, 117 P.2d 281 (1941).

B. Standard Of Review

"This Court freely reviews a district court's ruling on an I.C.R. 35 motion to correct an illegal sentence." State v. McKinney, 153 Idaho 837, 840, 291 P.3d 1036,

1039 (2013). Likewise, it exercises free review over “matters of statutory interpretation.” Guzman v. Piercy, 155 Idaho 928, 934, 318 P.3d 918, 924 (2014). However, “[w]hen there is controlling precedent on questions of Idaho law the rule of stare decisis dictates that [this Court] follow it, unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice.” State v. Grant, 154 Idaho 281, 287, 297 P.3d 244, 250 (2013) (internal quotation marks omitted) (quoting Greenough v. Farm Bureau Mut. Ins. Co. of Idaho, 142 Idaho 589, 592, 130 P.3d 1127, 1130 (2006)).

C. In Light Of Hof’s Guilty Plea, The District Court Correctly Determined That His Sentence Is Not Illegal On The Face Of The Record

“[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.” State v. Clements, 148 Idaho 82, 86, 218 P.3d 1143, 1147 (2009). “Rule 35 is a ‘narrow rule.’ Because an illegal sentence may be corrected at any time, the authority conferred by Rule 35 should be limited to uphold the finality of judgments.” Id. “‘As the Rule’s language and history make clear, the narrow function of Rule 35 is to permit correction at any time of an illegal sentence, not to re-examine errors occurring at the trial or other proceedings prior to the imposition of sentence.’” Id. at 85, 218 P.3d at 1146 (brackets omitted) (quoting Hill v. United States, 368 U.S. 424, 430 (1962)).

Hof’s argument is premised on the proposition that, having pled guilty to the persistent violator enhancement (Aug.Tr., p.17, Ls.15-19), he can invoke Rule 35(a) to abandon that plea more than five years later. The Idaho Supreme Court considered and

rejected the attempt to use Rule 35(a) to walk back a guilty plea in Clements. There, Clements pled guilty to two separate underlying charges and two separate firearm enhancements, one associated with each underlying charge. Id. at 83, 218 P.3d at 1144. Ten years after his conviction, he filed a Rule 35(a) motion arguing that he could not be subject to both enhancements because the underlying charges arose from the same indivisible course of conduct and, pursuant to Idaho Code section 19-2520E, he could therefore be subject to only one enhancement. Id. at 83-84, 218 P.3d at 1144-45. The district court granted the motion and the Idaho Supreme Court reversed. Id. at 84, 218 P.3d at 1145.

After holding that Rule 35(a) is intended to correct only illegal sentences, not presentencing errors, the Court noted that “Clements pled guilty to the underlying substantive crimes *and* the firearms enhancements.” Id. at 86, 218 P.3d at 1147. Such a plea “waives all non-jurisdictional defects and defenses, whether constitutional or statutory, in prior proceedings.” Id. (quoting State v. Al-Kotrani, 141 Idaho 66, 69, 106 P.3d 392, 395 (2005)). By pleading guilty to both firearm enhancements, Clements waived the defense to the enhancements that he was attempting to assert through his Rule 35(a) motion. Id.; see also State v. Wilhelm, 135 Idaho 111, 117-18, 15 P.3d 824, 830-31 (Ct. App. 2000) (holding that where defendant pled guilty to persistent violator enhancement, he waived argument that he was not properly subject to enhancement because one of the prior charges on which the state relied was in fact a misdemeanor); State v. Self, 139 Idaho 718, 725, 85 P.3d 1117, 1124 (Ct. App. 2003) (where defendant pled guilty to persistent violator enhancement and later argued in a Rule 35 motion that his sentence was illegal because one of the prior felonies should have been charged as a

misdemeanor, the challenge “was beyond the scope of a Rule 35 motion”); State v. McDonald, 130 Idaho 963, 964, 950 P.2d 1302, 1303 (Ct. App. 1997) (where defendant pled guilty to driving under the influence enhanced by a prior felony conviction and later filed a Rule 35(a) motion claiming that the enhancement was improper, holding that defendant was not using Rule 35(a) for its narrow purpose of re-examining a sentence).

Though Hof is “mindful” of Clements and acknowledges “that he pled guilty to the Information’s Part III [addressed to the persistent violator enhancement]” (Appellant’s brief, p.9), he does not argue that his sentence exceeds what is authorized by his conviction and the persistent violator enhancement to which he pled guilty. Idaho Code section 19-2514 authorizes a sentence between five years and life, while Hof was sentenced to a unified term of forty years with ten years fixed. (Aug.R., pp.41-42; p.31, Ls.11-21.) Rather, as did Clements, Hof is attempting to invoke Rule 35(a) to effectively withdraw his plea, not to challenge the legality of the sentence in light of his plea. Hof cannot plead guilty, receive a sentence consistent with that plea, only then to argue that the sentence is illegal.

The only case relied on by Hof in an attempt to show otherwise is State v. Kerrigan, 143 Idaho 185, 141 P.3d 1054 (2006). It does not support his view. The Court in Clements specifically addressed Kerrigan and noted that “Clements’s case is distinguishable from *Kerrigan*. The defendant in *Kerrigan* only pled guilty to aggravated battery, whereas Clements pled guilty to the underlying substantive crimes *and* the firearm enhancements.” Clements, 148 Idaho at 86, 218 P.3d at 1147 (emphasis in original). Likewise, Hof pled guilty to the underlying substantive crimes *and* the persistent violator enhancement. In light of the latter plea, the record reflects that he is

subject to the persistent violator enhancement and his sentence is therefore not illegal on the face of that record.

D. Idaho Law Does Not Limit The Persistent Violator Enhancement To A Defendant's Third Felony Conviction

Because Hof pled guilty to the persistent violator enhancement, this Court need not reach his argument that he is not subject to that enhancement under a proper interpretation of Idaho Code section 19-2514. Nevertheless, that argument fails on its merits. It amounts to the view that he has violated the law too persistently to be subject to the persistent violator enhancement. Nearly eighty years ago, in State v. Bates, 63 Idaho 119, 117 P.2d 281 (1941), the Idaho Supreme Court correctly rejected such a reading of Idaho Code section 19-2514.

Idaho jurisprudence requires respect for its own precedent. The rule of stare decisis dictates that controlling precedent be followed ““unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice.”” State v. Dana, 137 Idaho 6, 9, 43 P.3d 765, 768 (2002) (quoting Reyes v. Kit Mfg. Co., 131 Idaho 239, 240, 953 P.2d 989, 990 (1998)); see also State v. Guzman, 122 Idaho 981, 1001, 842 P.2d 660, 680 (1992) (“[P]rior decisions of this Court should govern unless they are manifestly wrong or have proven over time to be unjust or unwise.”); State v. Hall, 163 Idaho 744, 799, 419 P.3d 1042, 1097 (2018) (““Having previously decided this question, and being presented with no new basis upon which to consider the issue, [the Court is] guided by the principle of stare decisis to adhere to the law as expressed in [its] earlier opinions.”” (quoting State v. Delling, 152 Idaho 122, 131, 267 P.3d 709, 718 (2011))).

In Bates, the appellant made the identical argument that Hof offers here: that he could not be subject to the persistent violator enhancement because that enhancement applies only to the defendant's third felony conviction and he had too many felony convictions. Bates, 63 Idaho at ____, 117 P.2d at 281. The Court held that the argument was "without merit" because "[o]bviously 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." Id. Hof argues that Bates was incorrectly decided. (Appellant's brief, pp.9-10.) To overcome stare decisis, he must show that it was not only incorrectly decided, but is manifestly wrong.² See Sopatyk v. Lemhi Cty., 151 Idaho 809, 819, 264 P.3d 916, 926 (2011).

The Court's conclusion in Bates is far from manifestly wrong—it is correct. "The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act." State v. Dunlap, 155 Idaho 345, 361, 313 P.3d 1, 17 (2013) (quoting State v. Schulz, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011)). "[W]hen interpreting a statute, every effort should be made to give meaning to each word so as not to render any word superfluous or without meaning." Barringer v. State, 111 Idaho 794, 803, 727 P.2d 1222, 1231 (1986). "A statute is ambiguous where the language is capable of more than one reasonable construction." City of Sandpoint v. Sandpoint Indep. Highway Dist., 139 Idaho 65, 69, 72 P.3d 905, 909 (2003). "Where statutes are unambiguous, the clearly expressed intent of the legislative body must be given effect,

² Hof argues only that Bates was incorrectly decided, not that it has "proven over time to be unjust or unwise," or that "overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice." Dana, 137 Idaho at 9, 43 P.3d at 768.

and there is no occasion for a court to construe the language.” SE/Z Const., L.L.C. v. Idaho State Univ., 140 Idaho 8, 12-13, 89 P.3d 848, 852-53 (2004). But where the words of the statute are ambiguous because the statute is capable of more than one reasonable construction, the Court ““must construe the statute to mean what the legislature intended it to mean,”” which it does by examining ““not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history.”” State v. Taylor, 160 Idaho 381, 385, 373 P.3d 699, 703 (2016) (internal quotation marks omitted) (quoting Doe v. Boy Scouts of Am., 148 Idaho 427, 430, 224 P.3d 494, 497 (2009)).

Idaho Code section 19-2514 reads in its entirety:

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.

I.C. § 19-2514. The statute is most naturally read as doing two things. First, it establishes a certain status that an offender convicted of three felonies thereby achieves—he or she becomes a “persistent violator of law.” Second, it associates an enhanced sentence with that status.

Hof is clearly and unambiguously a persistent violator of law. Whether he has been convicted of three felonies or twenty, he has been “convicted for the third time of the commission of a felony.” I.C. § 19-2514. Hof appears to agree and so “focuses on the second of these consequences”—the enhancement associated with that status. (Appellant’s brief, p.10.) Based on the phrase “on such third conviction,” he argues that

“the plain language of I.C. § 19-2514 authorizes an enhanced sentence only on the third felony conviction.” (Id.). That is, Hof argues that though he is a persistent violator as defined by the statute, the enhancement is applicable only on the occasion of his elevation to that status. Effectively, he reads “on such third conviction” to mean “on [and only on] such third conviction.”

But this reading of the statute renders its first function—establishing the status “persistent violator of law”—completely superfluous. While it so happens that a person who has achieved that status will forever after be a “persistent violator of law,” that fact has no direct consequences with respect to sentencing for any subsequent felony conviction, be it the persistent violator’s fourth, fifth, or twentieth.³ The status defined by the statute is superfluous, on Hof’s reading. The statute might as well have read, in its entirety: “a person shall be sentenced from between five years to life for their third felony conviction.” This Court “will not construe a statute in a way which makes mere surplusage of provisions included therein.” Sweitzer v. Dean, 118 Idaho 568, 572, 798 P.2d 27, 31 (1990).

The more natural reading of the statute, the one endorsed in Bates, provides a purpose for both elements of Idaho Code section 19-2514. The statute first defines a certain status and then associates a sentencing consequence with it. An individual who has been three times convicted of a felony is a persistent violator of law and, in virtue of being a persistent violator of law, that person is subject to an enhanced sentence for any

³ Of course, the sentencing court could consider the defendant’s prior criminal record in sentencing within the range provided by the underlying conviction, but the fact that the defendant is a persistent violator of law would not affect the sentencing range itself.

felony conviction, whether it is his third, fourth, fifth, or twentieth. Of course, that enhanced sentence will be first available “on such third conviction,” when the status of persistent violator of law is achieved, but that in no way implies that it is thereafter unavailable to one who has achieved that status and is convicted of subsequent felonies. See, e.g., State v. Arthur, 145 Idaho 219, 221, 222-23, 177 P.3d 966, 968, 969-70 (2008) (affirming denial of motion to withdraw guilty plea to persistent violator enhancement where enhancement was based on four prior felonies); State v. Skunkcap, 157 Idaho 221, 226, 335 P.3d 561, 566 (2014) (“The maximum length of incarceration for felony eluding is five years, but Defendant had admitted to having been previously convicted of *at least* two felonies, which made him a persistent violator and extended the maximum penalty to life.” (emphasis added)); State v. Smith, 116 Idaho 553, 560, 777 P.2d 1226, 1233 (Ct. App. 1989) (“[T]he judge instructed the jurors that Smith could be found a persistent violator only if they determined upon the evidence presented that two *or more* of Smith’s prior convictions had been felonies. This was a correct statement of the law.” (emphasis added)); I.C.J.I. 1601 (instructing that defendant can be convicted of enhancement if he has been convicted on “at least” two prior occasions of felony offenses).

Idaho Code section 19-2514 is most reasonably and naturally interpreted as it has been for near eighty years, since at least Bates. But to the extent that this Court judges that it is ambiguous, the reading in Bates is clearly supported by considerations of public policy. “The purpose of our persistent violator statute is to punish repeat offenders by making their sentences for successive crimes more harsh.” State v. Brandt, 110 Idaho 341, 344, 715 P.2d 1011, 1014 (Ct. App. 1986). That sensible public policy is not served, it is undermined, by arbitrarily singling out a persistent violator’s third felony conviction

for more severe punishment, while every successive felony conviction thereafter is punished less severely.

Next, “[i]t is assumed that when the legislature enacts or amends a statute it has full knowledge of the existing judicial decisions and case law of the state.” Farmers Nat. Bank v. Green River Dairy, LLC, 155 Idaho 853, 859, 318 P.3d 622, 628 (2014) (quoting George W. Watkins Family v. Messenger, 118 Idaho 537, 540, 797 P.2d 1385, 1388 (1990)). The persistent violator statute was added to Idaho law in 1923, with substantially the same language as is currently in Idaho Code section 19-2514. S.L. 1923, ch. 109, §1, p.139 (codified at Compiled Statutes § 9035A). Bates was decided in 1941, at which time the statute had been re-codified, but not amended, at Idaho Code section 19-2414. In 1970, now codified at Idaho Code section 19-2514, the statute was amended for the first and only time, but in a manner not relevant to Hof’s appeal. S.L. 1970, ch. 143, § 2, p.126.⁴ In nearly eighty years, the legislature has never indicated disapproval of Bates. See State v. Mace, 133 Idaho 903, 907, 994 P.2d 1066, 1070 (Ct. App. 2000) (in holding that stare decisis required adherence to State v. Brandt, 110 Idaho 341, 715 P.2d 1011 (Ct.App.1986), noting “that the Idaho legislature has indicated no disapproval of the *Brandt* court’s interpretation of I.C. § 19–2514. In the thirteen years since

⁴ The amendment was as follows:

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 ~~imprisonment in the state penitentiary~~ **a term in the custody of the state board of correction which term shall be** for not less than five years and said ~~imprisonment term~~ **term** may extend to life.

S.L. 1970, ch. 143, § 2, p.126.

the *Brandt* decision, the legislature has not amended the statute to legislatively overrule *Brandt*.”).

As discussed above, this Court need not reach the interpretative question raised by Hof. But if it does so, stare decisis, the natural reading of the statute, public policy, and the legislature’s acquiescence to Bates over eighty years compel the result that a persistent violator of the law cannot escape the persistent violator enhancement by violating the law more persistently.

CONCLUSION

The state respectfully requests that this Court affirm the denial of Hof’s motion under Idaho Criminal Rule 35(a).

DATED this 21st day of March, 2019.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 21st day of March, 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:

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/s/ Andrew V. Wake
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