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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	NO. 46235-2018
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2004-1107
v.	)	
	)	
MICHAEL DELYNN DEUEL,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

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**BRIEF OF APPELLANT**

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

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**HONORABLE MICHAEL REARDON  
District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

Mindful of the applicable authorities, Michael Delynn Deuel asserts on appeal that the district court erred when it denied his second Idaho Criminal Rule 35(a) (“Rule 35(a)”) motion to correct an illegal sentence.

### Statement of the Facts and Course of Proceedings

In August 2004, the State charged Mr. Deuel by Information with grand theft, felony, I.C. §§ 18-2403(1) and 18-2407(1)(b). (No. 31361 R., pp.19-20.)<sup>1</sup> Later in 2004, the State filed an Information Part II, alleging Mr. Deuel was a persistent violator under I.C. § 19-2514,<sup>2</sup> because he had a 2004 conviction for forgery in Ada County No. H0300959, and a 1995 conviction for grand theft in Ada County No. H9500296. (No. 31361 R., pp.39-40.) Following a jury trial in November 2004 (*see* No. 31361 R., pp.43-50, 91-95), the jury found Mr. Deuel guilty of grand theft and of being a persistent violator (No. 31361 R., pp.89-90). In January 2005, the district court imposed a unified sentence of twenty years, with two years fixed. (No. 31361 R., pp.108-11.) Mr. Deuel appealed, and the Idaho Court of Appeals affirmed the

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<sup>1</sup> The Idaho Supreme Court has ordered that the record in this appeal be augmented to include the records and transcripts filed in Mr. Deuel’s prior appeals, Nos. 31361 and 34255. (Limited R., p.2.) All citations to “Limited R.” refer to the Limited Clerk’s Record prepared and filed for this appeal.

<sup>2</sup> Section 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 for life.

judgment of conviction and sentence of the district court. *State v. Deuel*, No. 31361, 2006 Unpublished Opinion No. 463 (Idaho Ct. App. Apr. 24, 2006).

In 2007, Mr. Deuel filed, pro se, a Motion to Correct an Illegal Sentence pursuant to Idaho Criminal Rule 35. (No. 34255 R., pp.11-20.) Mr. Deuel asserted: (1) “To apply Idaho Code 19-2514 only to those punished by imprisonment, while suffering not those punished by fine violates constitutional proscription on Equal Protection”; (2) “Idaho Code 19-2514 is an illegal Bill of Attainder”; (3) “The fine and/or imprisonment sentencing scheme for Grand Theft violates the privileges and immunities clause of the Fourteenth Amendment as well as denies Equal Protection”; (4) “The use of prior convictions that have an alternative sentencing scheme to formulate a persistent violator charge violates the Fourteenth Amendment”; and (5) “Idaho Code 19-2514 is mandatory without discretion.” (No. 34255 R., pp.12-18.)

On that last point, Mr. Deuel asserted, “The clear and unambiguous language” of section 19-2514 “mandates that any person convicted for the third time of the commission of a felony . . . 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 Corrections which term shall be for not less [than] five (5) years and said term may extend to life.” (No. 34255 R., p.18.) “This is a mandatory provision set by the legislature under the powers of Article V, section 13 of the Idaho constitution.” (No. 34255 R., p.18.) He further asserted: “It authorizes punishment upon conviction for the ‘third’ felony and stops there. There is no authority, express or implied that allows punishment or application beyond the third conviction.” (No. 34255 R., p.18 (citing Idaho Const. art. III, § 16).)

According to Mr. Deuel, “if a Statute’s mandatory language opens a door of opportunity for the State to apply its provisions upon conviction for a third felony, the application of the

doctrin[e] of laches should work estoppel in pais if the State attempts to reach beyond the third conviction.” (No. 34255 R., pp.18-19.) He asserted, “In the case at Bar, Defendant’s third conviction of a felony was entered in 2004 for the crime of forgery in case #H0300959\*, Fourth District, Ada County.” (No. 34255 R., p.19.) Mr. Deuel then asserted, “The State had the ball and dropped it, the doctrine of laches prevents the State from recouping its loss at the expense of Defendant.” (No. 34255 R., p.19.) Mr. Deuel requested the district court “correct and vacate” his sentence. (No. 34255 R., p.19.)

The district court shortly thereafter issued an Order Denying Motion to Correct and Vacate Illegal Sentence. (No. 34255 R., pp.21-23.) The district court ruled: “I.C. § 19-2514 does not violate a defendant’s due process or equal protection rights. State recidivist statute[s] do not violate constitutional standards against double jeopardy, ex post facto laws, or cruel and unusual punishment and did not run afoul of requirements of due process, equal protection and privileges and immunities.” (No. 34255 R., pp.21-22 (citing *Balla v. State*, 98 Idaho 344 (1977); *State v. Polson*, 93 Idaho 912 (1970), *cert. denied*, 91 S. Ct. 1527 (1971).)

The district court also ruled, “the Persistent Violator Act is not a Bill of Attainder.” (No. 34255 R., p.22.) Thus, the district court determined, “Deuel’s entire Motion is without merit and since his sentence is not illegal, his Motion is denied.” (No. 34255 R., p.22.) Mr. Deuel appealed the district court’s denial of his motion to correct an illegal sentence, and the Idaho Court of Appeals affirmed the denial in *State v. Deuel*, No. 34255, 2007 Unpublished Opinion No. 679 (Idaho Ct. App. Nov. 28, 2007). (*See Limited R.*, p.22 n.1.)

In 2018, Mr. Deuel filed a second pro se Motion to Correct an Illegal Sentence, pursuant to Rule 35(a). (*Limited R.*, p.10.) In the attached Memorandum of Claims with Supporting Authorities and Argument, Mr. Deuel asserted: (1) the district court lacked jurisdiction to punish



him as a persistent violator of the law at any time, other than at the time of his third felony conviction; (2) jurisdiction to enforce section 19-2514 is restricted to crimes that are designated a felony by specific statutory provision; and (3) section 19-2514 violates the due process and equal protection clauses of both the Idaho and federal Constitutions. (Limited R., pp.12-18.)

Regarding the first point, Mr. Deuel asserted the title and language of section 19-2514 “only authorized an enhancement on the third conviction for a felony.” (Limited R., p.13.) While Mr. Deuel “recognizes that State v. Bates, 63 Idaho 119, 117 P.3d 281 (1941) pollutes the landscape with controlling precedent,” he “respectfully posits that the Bates decision is bad law in light of the principles of statutory analysis expressed in State v. Owens, [158 Idaho 1 (2015)], and Verska v. St. Alphonsus Regional Medical Center, 151 Idaho 889 [(2011)].” (Limited R., p.13.) He asserted, “when the Bates court interpreted Idaho Code 19-2514 (I.C.A. 19-2414 [at the time of decision]) to encompass sentencing enhancement past the third felony conviction, it erred by ignoring the rule of lenity; Article III, section 16 of the Idaho State Constitution, as well as applying liberal construction in arriving at its broadened and extended interpretation.” (Limited R., pp.13-14.)

He then asserted, “the statute reads on the third conviction of a felony, the persistent violator shall be sentenced to imprisonment for not less than five years, up to life.” (Limited R., p.14.) According to Mr. Deuel, “If the legislature intended 19-2514 to enhance a sentence past the third felony conviction, it should have worded the statutory language [parroting] N.D. Comp. Laws 1913, sec. 10340-10344, second or subsequent offenses, or Idaho Code 37-2739, second [third] or subsequent offenses.” (Limited R., p.14 (second alteration in original).) He asserted, “The liberal construction by the Bates court left legislative intent by the curbside . . . . Clearly, the mandatory language meant that . . . 3 strikes, you’re out!!!” (Limited R., p.15.)

Mr. Deuel also asserted, “Article III, section 16 of the Idaho Constitution mandates unity of subject and title of an act.” (Limited R., p.15.) He wrote that the original bill passed by the Idaho Legislature was “devoid of any reference or intent by the legislature to enhance punishment to any conviction subsequent to the third strike.” (Limited R., p.15.) Mr. Deuel asserted the *Bates* Court “added subject[s] not expressly embraced in the title of the bill.” (Limited R., p.15.) “Moreover, the Bates court is in contrast to the mandatory language, for [it’s] not so unreasonable or absurd for the legislature to restrict enhancement of felony convictions to three strikes, and call it quits on reform.” (Limited R., p.15.) Additionally, Mr. Deuel asserted criminal statutes must be strictly construed, in favor of the defendant. (*See* Limited R., p.16.)

In sum, Mr. Deuel asserted, “When the Bates court amended Idaho Code 19-2514 by judicial legislation, stretching [its] reach to cover felony convictions subsequent to the third, it arrived at the decision by violating the rule of lenity; Article III, Section 16 and 18, Idaho State Constitution; and the Canons of Statutory Construction.” (Limited R., p.16.) He requested “that this court strike from the judgment any punishment inflicted under the provisions of Idaho Code 19-2514.”<sup>3</sup> (Limited R., p.16.)

The district court then issued an Order Denying Motion to Correct Illegal Sentence. (Limited R., pp.21-24.) The district court noted Mr. Deuel “had previously filed a Motion to Correct an Illegal Sentence arguing many of these same issues.” (Limited R., p.22 n.1.) Turning to the merits, the district court ruled that “Idaho Code section 19-2514 is applicable to a defendant’s third felony conviction and all subsequent felony convictions.” (Limited R., p.22 (citing *Bates*, 63 Idaho 119, 117 P.2d 281, 281).) The district court then ruled: “Defendant

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<sup>3</sup> However, Mr. Deuel also stated, “Understanding that this court is without power to overrule the Bates decision, it does have authority in other areas raised.” (Limited R., p.19.)

argues that *Bates* is no longer good law in light of [*Owens*] and [*Verska*]. The Court disagrees.” (Limited R., p.22.)

As for Mr. Deuel’s other assertions, the district court ruled that grand theft is statutorily defined as a felony, as provided in Idaho Code section 18-2408 (*see* Limited R., p.22), and that section 19-2514 does not violate due process or equal protection (*see* Limited R., p.23 (citing *Balla*, 98 Idaho 344; *Polson*, 93 Idaho 912)). The district court therefore denied Mr. Deuel’s second Rule 35(a) motion. (Limited R., p.23.)

Mr. Deuel filed, pro se, a Notice of Appeal timely from the district court’s Order Denying Motion to Correct Illegal Sentence. (Limited R., pp.25-28; *see* Limited R., pp.51-53 (Amended Notice of Appeal).)

ISSUE

Did the district court err when it denied Mr. Deuel's second Idaho Criminal Rule 35(a) motion to correct an illegal sentence?

## ARGUMENT

### The District Court Erred When It Denied Mr. Deuel’s Second Idaho Criminal Rule 35(a) Motion To Correct An Illegal Sentence

Mindful of the applicable authorities, Mr. Deuel asserts that the district court erred when it denied his Rule 35(a) motion to correct an illegal sentence.

Generally, whether a sentence is illegal or was imposed in an illegal fashion is a question of law, over which an appellate court exercises free review. *State v. Clements*, 148 Idaho 82, 84 (2009). Idaho Criminal Rule 35 provides that a district court “may correct a sentence that is illegal from the face of the record at any time.” I.C.R. 35(a).

The Idaho Supreme Court has held, “the 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.” *Clements*, 148 Idaho at 86. “[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 (2015) (citing *Clements*, 148 Idaho at 84-87). “Rule 35 inquiries must involve only questions of law—they may not include significant factual determinations to resolve the merits of a Rule 35 claim. If a district court does inquire and make significant factual determinations, it exceeds its scope of authority under Rule 35.” *Id.* (citing *Clements*, 148 Idaho at 87-88). Further, “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.* (citing *Clements*, 148 Idaho at 85).

In *Wolfe*, the Idaho Supreme Court also reiterated, “Res judicata precludes re-litigation of issues that have been previously decided in a final judgment or decision in an action between the same litigants.” *Id.* at 63 (citing *State v. Rhoades*, 134 Idaho 862, 863 (2000).) “[R]es judicata’s

preclusive effect bars ‘not only subsequent re-litigation of a claim previously asserted, but also subsequent re-litigation of any claims relating to the same cause of action which were actually made or which might have been made’ in the first suit.” *Id.* (quoting *Hindmarsh v. Mock*, 138 Idaho 92, 94 (2002).)

The *Wolfe* Court noted, “This Court has applied res judicata to the context of successive Rule 35 motions that allege the same underlying issues.” *Id.* In *Rhoades*, the Idaho Supreme Court held that res judicata could be applied to bar successive Rule 35 motions where the defendant attempts to re-litigate issues already decided in earlier Rule 35 motions. *Rhoades*, 134 Idaho at 863. The Court in *Wolfe* held res judicata barred the defendant’s successive Rule 35 motion alleging the district court lacked subject matter jurisdiction over his underlying offense, where the defendant had asserted that claim in his initial Rule 35 motion alleging an illegal sentence and in a petition for post-conviction relief. *Wolfe*, 158 Idaho at 64.

Idaho Code section 18-2408 provides that grand theft is a felony. I.C. § 18-2408(1). As referenced by the district court (*see Limited R.*, p.22), the Idaho Supreme Court has held, “When the statute defines a crime as a felony and does not provide for an alternate misdemeanor sentence, the punishment actually imposed is not controlling in determining whether the crime is a felony or misdemeanor,” *United States v. Sharp*, 145 Idaho 403, 406 (2008).

Mindful of the above applicable authorities, Mr. Deuel asserts the district court erred when it denied his second Rule 35(a) motion. The persistent violator statute, Idaho Code section 19-2514, provides: “Any person convicted for the third time of the commission of a felony . . . 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. As he asserted before the district

court, this language “only authorized an enhancement on the third conviction for a felony.” (*See Limited R.*, p.13.) But Mr. Deuel suggested in his initial Rule 35(a) motion that the conviction in the instant case is his fourth felony conviction. (*See No. 34255 R.*, p.19.) Thus, Mr. Deuel’s sentencing enhancement under section 19-2514 must be vacated. (*See Limited R.*, p.16.)

In *State v. Bates*, 63 Idaho 119, 117 P.2d 281 (1941), a case relied upon by the district court, the appellant similarly argued that “prior to the present prosecution he had been convicted of a felony three times, this would therefore be his fourth conviction, and he could not be a persistent violator because section 19-2414, I.C.A. [the persistent violator statute at the time] provides that upon conviction for the third time of the commission of a felony one shall be considered a persistent violator.” *Bates*, 63 Idaho at \_\_\_\_, 117 P.2d at 281. The Idaho Supreme Court in *Bates* held that assignment of error 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.*, 117 P.2d at 281.

As he indicated before the district court (*see Limited R.*, pp.13-16), Mr. Deuel submits on appeal that *Bates* was incorrectly decided and manifestly wrong, because it overlooked the plain language of section 19-2514. The Idaho Supreme Court has held: “The interpretation of a statute ‘must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.’” *Verska v. St. Alphonsus Reg’l Med. Ctr.*, 151 Idaho 889, 893 (quoting *State v. Schwartz*, 139 Idaho 360, 362 (2003)).

Here, as Mr. Deuel asserted before the district court (*see Limited R.*, pp.13-14), the plain language of section 19-2514 is unambiguous. The plain statutory language does not contemplate

the sentencing enhancement applying to a person upon their fourth felony conviction or other felony conviction subsequent to the third. *See* I.C. § 19-2514; *cf.* I.C. § 37-2739(a) (“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.”). The Court’s reasoning in *Bates* incorrectly looked at legislative intent, when Idaho Code section 19-2514 is unambiguous. *See State v. Owens*, 158 Idaho 1, 5 (2015). Thus, *Bates* was incorrectly decided and manifestly wrong. *See Owens*, 158 Idaho at 5-6; *Verska*, 151 Idaho at 894, 896. The district court erred when it denied Mr. Deuel’s second Rule 35(a) motion to correct an illegal sentence.

#### CONCLUSION

For the above reasons, Mr. Deuel respectfully requests that this Court vacate the district court’s denial of his second Rule 35(a) motion to correct an illegal sentence, and remand the case to the district court for further proceedings.

DATED this 29<sup>th</sup> day of January, 2019.

/s/ Ben P. McGreevy  
BEN P. MCGREEVY  
Deputy State Appellate Public Defender



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of January, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

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

BPM/eas