

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46235
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR-FE-2004-1107
)
 MICHAEL DELYNN DEUEL,)
)
 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**

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District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Michael Delynn Deuel 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 2004, Michael Delynn Deuel was charged with felony grand theft (No. 31361 R., pp.19-20¹) and as a persistent violator under Idaho Code section 19-2514 (No. 31361 R., pp.39-40). The charging document associated with the persistent violator enhancement—Information, Part II—identified two previous felony convictions as forming the basis for the enhancement. (No. 31361 R., pp.39-40.) Deuel was convicted by a jury of both the underlying felony and the enhancement. (No. 31361 R., pp.89-90; pp.108-11.) He was sentenced to a unified term of twenty years with two years fixed. (Id.) He timely appealed (No. 31361 R., pp.112-15) and, in an unpublished opinion, the Idaho Court of Appeals affirmed his sentence. State v. Deuel, Docket No. 31361, 2006 Unpublished Opinion No. 463 (Idaho App., April 24, 2006).

In May of 2007, Deuel filed a motion under Idaho Criminal Rule 35 to correct an allegedly illegal sentence. (No. 34255 R., pp.11-20.) Along with a number of arguments not relevant here, Deuel argued that Idaho Code section 19-2514 permits

¹ On November 23, 2018, this Court entered an order requiring that “this Record on Appeal shall be augmented to include the Clerk’s records and Reporter’s Transcripts filed in prior appeal Nos. 31361-2004 and 34255-2007, *State v. Deuel* (Ada County No. CR-FE-2014-1107).” Following Deuel, the state will refer to records from the prior appeals as “No. 31361 R.” and “No. 34255 R.”, respectively, and will refer to the Limited Clerk’s Record in this appeal as “Limited R.”

enhancement of the sentence for a persistent violator's third felony conviction, but not enhancement of the sentence for any subsequent felony conviction. (No. 34255 R., pp.18-19.) He asserted that his "third conviction of a felony was entered in 2004 for the crime of forgery in #H0300959*, Fourth District, Ada County." (No. 34255 R., p.19.) That conviction was one of the two prior felony convictions identified in the Information, Part II, as providing the basis for the persistent violator enhancement. (No. 31361 R., pp.39-40.) The district court denied the motion. (No. 34255 R., pp.21-23.) Deuel timely appealed. (No. 34255 R., pp.24-27.) Again, the Idaho Court of Appeals affirmed, concluding that "no illegality has been shown." State v. Deuel, Docket No. 34255, 2007 Unpublished Opinion No. 679 (Idaho App., Nov. 28, 2007).

On March 25, 2018, Deuel filed a second motion under Rule 35 arguing that his sentence is illegal. (Limited R., pp.10-20.) Deuel again made a variety of arguments, including that Idaho Code section 19-2514 permits the enhancement of the sentence for a persistent violator's third felony conviction, but not the sentence for any subsequent felony conviction. (Limited R., pp.12-16.) The district court denied the motion. (Limited R., pp.21-24.) The court initially noted that "Defendant had previously filed a Motion to Correct an Illegal Sentence arguing many of these same issues: On May 3, 2007 the Court denied that motion and on November 28, 2007 the Idaho Court of Appeals affirmed that denial." (Limited R., p.22 n.1.) The court then considered the merits of Deuel's motion and denied it. As to the application of Idaho Code section 19-2514 to felony convictions subsequent to a persistent violator's third, it held that "Idaho Code section 19-2514 is applicable to a defendant's third felony conviction and all subsequent

felony convictions. *State v. Bates*, 63 Idaho 119, 117 P.2d 281, 281 (1941).” (Limited R., p.22.) Deuel timely appealed. (Limited R., pp.25-28.)

ISSUE

Deuel states the issue on appeal as:

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

(Appellant's brief, p.7)

The state rephrases the issue as:

Has Duell failed to show that the district court erred when it concluded that his sentence is not illegal on the face of the record?

ARGUMENT

The District Court Correctly Denied Deuel's Motion Under Rule 35(a)

A. Introduction

Deuel argues that his sentence is illegal because Idaho Code section 19-2514 permits an enhancement of the sentence for a persistent violator's third felony conviction, but not for the sentence associated with any subsequent felony conviction. According to Deuel, the instant conviction was his fourth. (Appellant's brief, p.10.) His argument fails for two reasons. First, this Court need not reach the merits of Deuel's statutory argument. Even if he were correct regarding the interpretation of Idaho Code section 19-2514, Deuel has not shown that his sentence is illegal on the face of the record because he points to nothing in the record establishing that the instant conviction was not his third. In addition, the argument was raised in a previous Rule 35(a) motion, the denial of which was affirmed on appeal. Second, he is incorrect regarding the interpretation of Idaho Code section 19-2514.

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. Even If Deuel Is Correct Regarding The Interpretation Of Idaho Code Section 19-2514, The District Court Did Not Err In Denying His Rule 35(a) Motion

This Court need not reach Deuel’s statutory argument. Even assuming that Idaho Code section 19-2514 only permits the enhancement of the sentence for a persistent violator’s third felony conviction, Deuel’s sentence is not illegal on the face of the record. He has pointed to nothing in the record showing that the instant felony conviction was not his third. Indeed, he did not even assert as much below. In addition, he has pressed this same argument in a prior motion under Rule 35(a) that was denied and the denial of which was affirmed on appeal.

“[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. (quoting State v. Farwell, 144 Idaho 732, 735, 170 P.3d 397, 400 (2007)). “The rule is limited to legal questions surrounding the defendant’s sentence, and any factual issues must be apparent from the face of the record.” State v. Meier, 159 Idaho 712, 713, 366 P.3d 197, 198 (Ct. App. 2016).

On appeal, to support the view that his sentence was improperly enhanced for a felony conviction other than his third, Deuel points only to his own assertion in his first

Rule 35(a) motion, filed in 2007: ““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.”” (Appellant’s brief, p.3 (quoting No. 34255 R., p.19); see also p.10 (“Mr. Deuel suggested in his initial Rule 35(a) motion that the conviction in the instance case is his fourth felony conviction.”).) His 2007 Rule 35(a) motion does not support that assertion by any reference to the record. Deuel’s mere assertion that the instant felony conviction was not his third does not make that alleged fact apparent from the face of the record. See State v. Peterson, 148 Idaho 610, 613, 226 P.3d 552, 555 (Ct. App. 2010) (holding that sentence was not illegal from the face of the record where alleged illegality was based only on appellant’s “assertion of a fact not shown by the record”).

In addition, Deuel’s Rule 35(a) motion filed in 2007—the only portion of the record to which he cites to support the view that the instant conviction was not his third—is not on appeal. This appeal is from the denial of his Rule 35(a) motion filed in 2018. (Limited R., pp.25-28.) In that motion, Deuel does not even bother to claim that the instant conviction was not his third, much less does he point to any portion of the record from which that proposition would be apparent. (See generally Limited R., pp.11-20.) Neither the district court below nor this Court should be asked to “search the record to substantiate [Deuel’s] claims of error.” See Hull v. Giesler, 163 Idaho 247, 251, 409 P.3d 827, 831 (2018). Indeed, it is difficult to see how the district court could have erred in denying a motion that did not point to any portion of the record, despite the fact that his claim for relief under Rule 35(a) hinged on establishing illegality on the face of the record.

Both on appeal and below, Deuel has not shown that it is apparent from the face of the record that the instant conviction was not his third. Even if he is correct as to the interpretation of Idaho Code section 19-2514, he has therefore not shown that his sentence is illegal from the face of the record and has not established entitlement to relief under Rule 35(a).

Further, both Deuel's 2007 (No. 34255 R., pp.18-19) and 2018 (Limited R., pp.12-16) Rule 35(a) motions made the same argument regarding Idaho Code section 19-2514. As Deuel acknowledges in his briefing, the Idaho Supreme Court "has applied res judicata to the context of successive Rule 35 motions that allege the same underlying issues." (Appellant's brief, p.9 (quoting State v. Wolfe, 158 Idaho 55, 63, 343 P.3d 497, 505 (2015)). The district court recognized that Deuel's successive Rule 35(a) motions alleged the same underlying issues (Limited R., p.22 n.1) and, though it did not deny Deuel's motion on that basis, that fact does not preclude this Court from affirming that denial on the basis of res judicata. See State v. Rhoades, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000) ("[B]ecause consideration of the present motion is barred by the doctrine of res judicata, we affirm the order of the district judge denying Rhoades' Rule 35 motion to correct an illegal sentence, albeit on different grounds than those used by the district judge.").

D. Idaho Code Section 19-2514 Does Not Limit The Persistent Violator Enhancement To A Defendant's Third Felony Conviction

Deuel's argument regarding the interpretation of Idaho Code section 19-2514 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 Deuel 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 the instant conviction was his fourth. 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 for any subsequent one.” Id. Deuel argues that Bates was incorrectly decided. (Appellant’s brief, pp.9-11.) 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, 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.3 699, 703 (2016)

² Deuel 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.

(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.

If the instant felony conviction was Deuel’s fourth, as he claims (Appellant’s brief, p.10), he is 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” and therefore “shall be considered a persistent violator of law.” I.C. § 19-2514. Nevertheless, Deuel argues that the statute “only authorized an enhancement on the third conviction for a felony.” (Appellant’s brief, p.10 (quoting Limited R., p.13).) That is, Deuel is committed to the view that though he is a persistent violator of law 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 Deuel’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 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,

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.

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 Deuel’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 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 Deuel. 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 law cannot escape the persistent violator enhancement by violating the law more persistently.

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.

CONCLUSION

The state respectfully requests that the Court affirm the denial of Deuel's Rule 35(a) motion.

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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