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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46274
Plaintiff-Respondent,	)	
	)	Canyon County Case No.
v.	)	CR14-18-15077
	)	
LEVI WILFRED MARTINEZ,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

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

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

In 1983, a jury found Martinez guilty of rape, lewd and lascivious conduct, aggravated battery, and second degree kidnapping, and the district court imposed consecutive sentences of 30 years fixed for rape, 30 years fixed for lewd conduct with a child under 16, and 15 years fixed

for aggravated battery, and a concurrent 25-year indeterminate sentence for second degree kidnapping. (16240 R., pp.67-68, 71-72, 134.) Martinez appealed and the Idaho Court of Appeals “reduced the sentences such that [Martinez] would become eligible for parole after 30 years” (46274 R., p.116 (citing State v. Martinez, 109 Idaho 61, 704 P.2d 965 (Ct. App. 1985)); however, the Idaho Supreme Court subsequently “overruled the decision of the Idaho Court of Appeals and the sentences as imposed were reinstated” (46274 R., p.116 (citing State v. Martinez, 111 Idaho 281, 723 P.2d 825 (1986)). (16002 R., pp.3-23.)

In 1986, Martinez filed a Rule 35 motion for reduction of sentence, which the district court denied. (16002 R., pp.24-26, 37-38.) Martinez appealed and the Idaho Supreme Court affirmed the district court’s denial of Martinez’s Rule 35 motion for reduction of sentence, State v. Martinez, 113 Idaho 535, 537, 746 P.2d 994, 996 (1987). (46274 R., pp.12-23.)

In August 1996, Martinez filed a “Motion for Reduction of Sentences Pursuant to Idaho Criminal Rule 35, Idaho Criminal Rule 33 and Idaho Code § 20-101” claiming that he had not received all of the “Good Time Credits” to which he was entitled and his sentences had therefore “become [ ] illegal sentences”; the district court denied the motion in October 1996. (46274 R., pp.34-38, 71-73.) In November 1996, Martinez filed a Rule 35 “Request [for] Relief from an Illegal Sentence,” asserting that his sentences were illegal because he made a Motion in Limine at trial and the district court failed to rule on the Motion in Limine prior to sentencing him. (46274 R., pp.81-85, 87-91.) The district court denied the motion, finding that Martinez’s request to correct sentences that were imposed in an illegal manner was not timely and that, “even if [Martinez] properly asserted that his sentence was illegal,” his sentences are “within the maximum sentencing guidelines set by the legislature.” (46274 R., pp.88-91.)

In July 2018, Martinez filed another Rule 35 motion for correction of an illegal sentence, claiming that his sentences are illegal because, he stated, “all charges have been drop[p]ed by accuser.” (46274 R., pp.92-95.) The only information he provided to support his claim was an affidavit from Delphina Martinez – who is neither the victim in this case (16240 R., pp.25-28) nor the individual who reported the instant offenses to law enforcement (16002 R., p.5) – stating, “I Hereby, Drop All Charges Against, The Martinez case#c5293 State. Martinez And Recant My Testimony [sic],” and requesting that Martinez “be released” (46274 R., p.93 (capitalization and punctuation original)). On August 9, 2018, the district court entered an order denying Martinez’s Rule 35 motion for correction of an illegal sentence, correctly finding that Martinez “has not alleged any facts that assert that the sentences imposed are illegal on their face” and he “is therefore not entitled to relief under I.C.R. 35(a),” and that Martinez “is likewise not entitled to relief under I.C.R. 35(b) because it has been over thirty-five years since entry of the judgment, well beyond the 120 day deadline provided for by the Rule.” (46274 R., pp.116-19.) On August 17, 2018, Martinez filed a notice of appeal timely from the district court’s order denying his Rule 35 motion for correction of an illegal sentence. (46274 R., pp.122-24.)

Mindful of legal authority that forecloses his argument, Martinez nevertheless asserts that “the district court erred in denying his Rule 35(a) motion to correct an illegal sentence because his accuser has submitted an affidavit stating she drops all charges against Mr. Martinez, she recants her testimony, and she requests that Mr. Martinez and his brother be released.” (Appellant’s brief, p.4.) Martinez has failed to show error in the denial of his Rule 35(a) motion for correction of an illegal sentence.

Pursuant to Idaho Criminal Rule 35, a district court may correct a sentence that is “illegal from the face of the record at any time.” 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). “[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, 343 P.3d 497, 507 (2015) (citations omitted). “Moreover, 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. (emphasis original).

On appeal, Martinez contends that “his sentence is illegal because, in light of the fact that the accuser has dropped all charges and recants her testimony, he can no longer be incarcerated for the underlying crimes.” (Appellant’s brief, p.4.) It should be noted that Martinez’s characterization of Delphina Martinez as his “accuser” is inaccurate, as Delphina Martinez is not the victim of the instant offenses, she is not the individual who reported the crimes to law enforcement, and she did not file the criminal charges against Martinez in this case. (16002 R., pp.4-5; 16240 R., pp.2-4, 25-28; see also 46274 R., p.117 (court noting affidavit was that of “victim’s mother”).) Furthermore, Martinez’s claim that his “accuser has dropped all charges” (Appellant’s brief, p.4) is not the proper subject of a Rule 35(a) motion. Martinez has not asserted that his *sentences* are illegal from the face of the record; rather, he essentially challenges his underlying convictions. Idaho Criminal Rule 35 cannot be used as the procedural mechanism to attack the validity of the underlying convictions. State v. McDonald, 130 Idaho 963, 965, 950 P.2d 1302, 1304 (Ct. App. 1997). Because Martinez’s claim does not allege that his *sentences*

are in excess of a statutory provision or otherwise contrary to applicable law, the alleged error does not fall within the scope of Rule 35(a). See, e.g., Wolfe, 158 Idaho at 65, 343 P.3d at 507.

Martinez has not shown that his sentences are illegal, nor has he shown any other basis for reversal of the district court's order denying his Rule 35(a) motion. Therefore, the district court's order denying Martinez's Rule 35(a) motion should be affirmed.

Conclusion

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

DATED this 20th day of February, 2019.

/s/ Lori A. Fleming  
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Deputy Attorney General

VICTORIA RUTLEDGE  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of February, 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:

ANDREA W. REYNOLDS  
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/s/ Lori A. Fleming  
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