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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46289-2018
)	
v.)	MINIDOKA COUNTY NO. CR-1996-1129
)	
KODY SHANE BUTCHER,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Kody Shane Butcher appeals from the district court's order denying his motion to correct an illegal sentence. Mindful of the relevant authority, Mr. Butcher asserts the district court erred when it denied his motion.

Statement of the Facts and Course of Proceedings

In 1997, Mr. Butcher was found guilty of one count of first-degree murder after a jury trial. (R., p.29.) The district court imposed a fixed life sentence. (R., p.30.) In June of 2018, Mr. Butcher filed an Idaho Criminal Rule 35(a) motion ("Rule 35 motion") to correct an illegal

sentence. (R., pp.64-69.) In the motion, he argued his sentence was illegal because “he was not told by trial counsel that he did not have to speak with the PSI investigator.” (R., p.66.) Additionally, he argued his right to due process was violated when exculpatory information in the form of a neuropsychological evaluation and information regarding brain development was not prepared and presented to the sentencing court. (R., pp.66-68.) Therefore, he argued that he should be granted a new or redacted PSI and a new sentencing hearing. (R., pp.68-69.)

Mr. Butcher also filed a declaration in support of a motion for the appointment of counsel in which he argued that he had been under the impression that a life sentence meant 30 years but was recently informed that his sentence “is not said to be extended, until the day after I am found dead.” (R., pp.14-15.) He also argued, among other things, that his trial counsel improperly waived his right to a preliminary hearing. (R., pp.16-26.) Mr. Butcher also filed, among other things, a motion for a confidential neuropsychological evaluation, a memorandum in support of that motion, and a “memorandum of facts” regarding the motion. (R., pp.70-122.)

The district court denied Mr. Butcher’s Rule 35 motion and his request for the appointment of counsel. (R., pp.123-24.) It noted that I.C.R. 35(a) “allows a court to correct a sentence that is illegal from the face of the record at any time” but held that Mr. Butcher’s sentence was not illegal. (R., pp.123-24.) With respect to Mr. Butcher’s motion for the appointment of counsel, the district court stated that the Rule 35 motion had “no merit,” and a “non-indigent defendant would not hire counsel to file such a motion.” (R., p.124.) Regarding the other materials Mr. Butcher submitted, it stated, “Many of the materials submitted by the Defendant seem to be in the nature of a petition for post-conviction relief,” and it noted that a petition for post-conviction relief would be untimely. (R., p.124.) Mr. Butcher filed a notice of

appeal timely from the district court's Order Denying Motion to Correct an Illegal Sentence and Appoint Counsel. (R., pp.128-30.)

ISSUE

Did the district court err when it denied Mr. Butcher's Idaho Criminal Rule 35 motion to correct an illegal sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Butcher's Idaho Criminal Rule 35 Motion To Correct An Illegal Sentence

Under Idaho Criminal Rule 35, a district court "may correct a sentence that is illegal from the face of the record at any time." I.C.R. 35(a). "Generally, whether a sentence is illegal or whether it was imposed in an illegal manner is a question of law over which" appellate courts exercise free review. *State v. Farwell*, 144 Idaho 732, 735 (2007) 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." *State v. Clements*, 148 Idaho 82, 86 (2009). More recently, the Idaho Supreme Court clarified that "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." *State v. Wolfe*, 158 Idaho 55, 65 (2015) (emphasis in original).

Mindful of *Clements* and *Wolfe*, Mr. Butcher argues the district court erred when it denied his Rule 35(a) motion because his counsel failed to inform him that he did not have to participate in the PSI interview. Additionally, he argues his right to due process was violated when exculpatory information in the form of a neuropsychological evaluation and information regarding brain development was not prepared and presented to the original sentencing court.

Therefore, the district court should have granted him a new sentencing hearing, and it erred when it denied his motion to correct an illegal sentence.

CONCLUSION

Mr. Butcher's respectfully requests that this Court vacate the district court's order denying his motion to correct an illegal sentence and remand the case for further proceedings.

DATED this 11th day of February, 2019.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

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

RPA/eas