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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46289
Plaintiff-Respondent,	)	
	)	Minidoka County Case No. CR-1996-
v.	)	1129D
	)	
KODY SHANE BUTCHER,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Has Butcher failed to show that the district court erred by denying his motion to correct an illegal sentence because it was not within the scope of Rule 35(a)?

ARGUMENT

Butcher Has Failed To Show The District Court Erred By Denying His Motion To Correct An Illegal Sentence Because It Was Not Within The Scope Of Rule 35(A)

Kody Shane Butcher and an accomplice kicked in Blake Morgan’s front door and “fired three rounds into Blake Morgan's head and neck, killing him.” State v. Butcher, 137 Idaho 125, 128, 44 P.3d 1180, 1183 (Ct. App. 2002). A jury convicted Butcher of first degree murder. Id. at

129, 44 P.3d at 1184. The district court imposed a determinate life sentence. Id. The Idaho Court of Appeals affirmed Butcher's conviction and sentence in 2002. Id. at 125, 44 P.3d at 1180.

On June 13, 2018, Butcher filed a Rule 35 motion "to correct an illegal sentence." (R., p. 64 (capitalization altered).) In the motion Butcher alleged that counsel did not tell him he did not have to cooperate in the PSI investigation. (R., p. 66.) He also requested a neuropsychological examination, claiming it would result in exculpatory evidence (R., pp. 66-89), and asked to redact his statements from the PSI (R., pp. 90-94). The district court denied the motion because Butcher's "sentence is not and was not illegal, let alone from the face of the record" and "was specifically upheld on appeal." (R., pp. 123-24.) Butcher filed a notice of appeal. (R., pp. 126-31, 142-45.)

The district court correctly concluded that Butcher had failed to set forth a viable claim. "The court may correct a sentence that is illegal from the face of the record at any time." I.C.R. 35(a). Determining whether a sentence is illegal from the face of the record "does not involve significant questions of fact or require an evidentiary hearing" and does not encompass "reexamin[ing] the facts underlying the case." State v. Clements, 148 Idaho 82, 86, 218 P.3d 1143, 1147 (2009). "[E]rrors occurring at trial or before the imposition of the sentence" are not within the scope of Rule 35(a). State v. Wolfe, 158 Idaho 55, 65, 343 P.3d 497, 507 (2015). Rule 35(a) motions address "only questions of law." Id. Because Butcher's claims relate to the contents of the PSI, he did not state a question of law regarding the legality of the sentence that could be answered from the face of the record. Therefore the district court correctly concluded that the issue Butcher attempted to raise was not within the scope of Rule 35(a).

Butcher is "mindful" that his motion is not a proper I.C.R. 35(a) challenge to the legality of his sentence. (Appellant's brief, p. 3 (capitalization altered).) He nevertheless asserts the district court erred by not declaring his fixed life sentence for first-degree murder unlawful.

(Appellant’s brief, pp. 3-4.) Because Butcher’s motion was not a facial challenge to the legality of his sentence, he has failed to show that the district court erred.

CONCLUSION

The state respectfully requests this Court to affirm the district court’s order denying Butcher’s Rule 35 motion.

DATED this 5th day of March, 2019.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of, 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:

REED P. ANDERSON  
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/s/ Kenneth K. Jorgensen  
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