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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46413-2018
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-0000-19301
)	
MICHAEL DAVID MURPHY,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

In 1992, pursuant to a plea agreement that included a waiver of his right to appeal his convictions and sentences, Murphy pled guilty to robbery and three counts of rape, and the district court imposed concurrent unified sentences of life, with 40 years fixed. (R., p.76.)

Murphy appealed and the Idaho Supreme Court dismissed his appeal, holding that Murphy had voluntarily waived his right to appeal. State v. Murphy, 125 Idaho 456, 872 P.2d 719 (1994).

Murphy later filed a Rule 35(a) motion for correction of an illegal sentence, contending that his sentences exceeded the maximum sentences allowed by law. State v. Murphy, 144 Idaho 152, 158 P.3d 315 (Ct. App. 2007). On March 13, 2007, the Idaho Court of Appeals affirmed the district court's order denying Murphy's Rule 35(a) motion for correction of an illegal sentence, holding that Murphy's sentences of "life imprisonment with 40 years determinate for robbery and three counts of rape" were not illegal. Id.

Approximately 11 years later, on May 22, 2018, Murphy filed a second Rule 35(a) motion for correction of an illegal sentence, asserting that his sentences are illegal because "he was not told by counsel that he did not have to speak with [the] PSI Investigator" and because the district court did not order a neuropsychological examination prior to sentencing him. (R., pp.14-18.) The district court entered an order denying the motion on May 29, 2018, and, on June 7, 2018, Murphy filed a notice of appeal timely from the district court's order denying his second Rule 35(a) motion for correction of an illegal sentence. (R., pp.76-80, 81-84.)

Mindful of legal authority that forecloses his argument, Murphy nevertheless asserts on appeal that the district court erred by denying his Rule 35(a) motion for correction of an illegal sentence, claiming as he did below that his sentences are illegal "because his trial counsel failed to tell him he did not have to participate in the Presentence Investigation process" and "his right to due process was violated because exculpatory evidence (a neuropsychological examination) was not presented to the district court prior to his sentencing." (Appellant's brief, pp.3-4 (parenthetical notation added).) Murphy 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).

Idaho Criminal Rule 35 cannot be used as the procedural mechanism to attack the validity of the underlying conviction. State v. McDonald, 130 Idaho 963, 965, 950 P.2d 1302, 1304 (Ct. App. 1997). “[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).

Murphy contends that his sentences are illegal “because his trial counsel failed to tell him he did not have to participate in the Presentence Investigation process” and “his right to due process was violated” because a neuropsychological examination “was not presented to the district court prior to his sentencing.” (Appellant’s brief, p.4.) However, Murphy’s complaints are not the proper subject of a Rule 35(a) motion. On their face, the claims do not allege Murphy’s *sentences* are in excess of a statutory provision or otherwise contrary to applicable law. Rather, they are claims that his counsel and/or the district court committed error *before the*

imposition of sentence. The alleged errors are therefore not within the scope of Rule 35(a). See, e.g., Wolfe, 158 Idaho at 65, 343 P.3d at 507.

The penalty for robbery is not less than five years, up to life in prison, I.C. § 18-6503, and the penalty for rape is not less than one year, up to life in prison, I.C. § 18-6104. The district court imposed concurrent unified sentences of life, with 40 years fixed (R., p.76), which fall within the statutory guidelines. See Murphy, 144 Idaho 152, 158 P.3d 315 (affirming the district court's determination that Murphy's sentences of "life imprisonment with 40 years determinate for robbery and three counts of rape" did not exceed the maximum sentences permitted by law and thus were not illegal). Murphy 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 (second) Rule 35(a) motion. Therefore, the district court's May 29, 2018 order denying Murphy's Rule 35(a) motion for correction of an illegal sentence should be affirmed.

Conclusion

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

DATED this 3rd day of April, 2019.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of April, 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/ Lori A. Fleming
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