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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46574-2018
)	
v.)	MADISON COUNTY NO. CR-2012-2108
)	
LESTER LAURAL JONES,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Lester Laural Jones appeals from the district court's order denying his Idaho Criminal Rule 35(a) motion to correct an illegal sentence. Mindful of the applicable authorities, Mr. Jones asserts the district court erred when it denied his Rule 35(a) motion.

Statement of the Facts and Course of Proceedings

Mr. Jones pleaded guilty to statutory rape, felony, I.C. § 18-6101(1). (R., p.80.)¹ In 2013, the district court imposed a unified sentence of thirty years, with ten years fixed. (R., p.80.) He filed an Idaho Criminal Rule 35 motion for a reduction of sentence, which the district court denied. (R., p.80.) Mr. Jones then appealed the length of his sentence, and the Idaho Court of Appeals affirmed his judgment of conviction and sentence. *State v. Jones*, No. 40863, 2014 Unpublished Opinion No. 337, 2014 WL 280371 (Idaho Ct. App. Jan. 24, 2014).

Mr. Jones later filed a petition for post-conviction relief, which the district court denied. (R., p.80.) He appealed, and the Idaho Court of Appeals affirmed the denial of the post-conviction petition. *Jones v. State*, No. 44529, 2017 Unpublished Opinion No. 523, 2017 WL 3033943 (Idaho Ct. App. July 18, 2017).

In May of 2018, Mr. Jones filed several pro se motions, including a “Motion for Correction of Illegal Sentencing by Means of Violations of Sentencing Procedure and PSI Consideration: Idaho Court Rules of Criminal Procedure Rule 35(a).” (R., pp.21-25.) In this Rule 35(a) motion, Mr. Jones asserted he was not told by counsel that he did not have to speak with the presentence investigator. (*See* R., p.22.) Moreover, he asserted his counsel “allowed violations to rise to the level of a ‘Fundamental Defect[?]’” (R., p.23.) He also asserted a neuropsychological examination should have been done before his sentencing. (*See* R., pp.22-24.) Mr. Jones concluded the state and constitutional issues contained in the Rule 35(a) motion and accompanying motions “raise significant questions to the said penalty an[d] to the depth of

¹ All citations to “R.” refer to the 127-page version of the Limited Clerk’s Record. The Idaho Supreme Court has ordered the record on appeal in this case be augmented to include the record and transcript from Mr. Jones’s prior appeal, No. 40863. (R., p.14.)

sentence inflicted upon this defendant,” and “[u]nder these circumstances the defendant should be granted a NEW PSI, and SENTENCING, with New Appointed Conflict Counsel, and his Status Hearing, to include Evidentiary hearing if necessary prior to resentencing consideration.” (R., p.24.)

The other pro se motions Mr. Jones filed included a motion for confidential neuropsychological exam at public expense, a motion for forma pauperis, a motion to redact the presentence investigation report and alternative motion for possible disqualification of the court, a motion for telephonic hearing, a motion for appointment of counsel, a motion for evidentiary hearing, a motion for transport, and a motion for status hearing. (R., pp.26-33, 71-79.)

The district court subsequently issued a Memorandum Decision on Defendant’s Pending Motions. (R., pp.80-92.) The district court stated: “The motions Jones filed for relief based on Rule 35(a) merely reiterate arguments that either were raised, or should have been raised, in Jones’ earlier Rule 35 motion, his appeal of the Rule 35 motion, and his recent petition for post-conviction relief. Indeed, some of the issues he now raises were previously considered and rejected by this Court and the Court of Appeals.”² (R., p.85.) The district court also observed, “The Idaho Court of Appeals has already ruled that the sentence is not ‘improper on its face,’ as is necessary for purposes of a Rule 35(a) motion.” (R., p.86.)

The district court determined, “Jones’ additional arguments in this second Rule 35 motion primarily consist of factual issues which are irrelevant as to the factors to be considered when assessing whether or not a sentence is illegal.” (R., p.86.) After citing *State v. Clements*, 148 Idaho 82, 86 (2009), the district court determined, “Jones has presented no arguments that his sentence is illegal.” (R., p.86.) According to the district court, Mr. Jones instead “has

presented many arguments which he believes could act as mitigating factors in modifying his sentence. This type of relief is only available under Rule 35(b), not 35(a).” (R., p.86.) The district court also indicated Mr. Jones’s request for relief would be untimely under Rule 35(b), any request for relief under Rule 35(b) would be an improper successive motion, and Rule 35 was not the proper vehicle for ineffective assistance of counsel claims. (*See R.*, p.86.) Further, the district court determined Mr. Jones had not established his ineffective assistance of counsel claims. (*See R.*, pp.86-87.) Additionally, the district court rejected Mr. Jones’s assertions on his request to obtain a confidential neuropsychological exam. (*See R.*, pp.87-89.)

In its conclusion, the district court summarized the applicable standard: “A Rule 35 (a) motion is not designed to be a mechanism for retrying the facts of a case; rather it is intended to correct a facially illegal sentence.” (R., p.89.) The district court determined: “Jones has presented no arguments to the Court indicating that his sentence is illegal on its face. He has only offered the Court arguments which he believes could have been mitigating factors at his original sentencing. Again, this is not the proper function of a Rule 35(a) motion.” (R., p.89.) Thus, the district court denied Mr. Jones’s Rule 35(a) motion and the accompanying motions. (R., p.89.)

Mr. Jones filed, pro se, a Notice of Appeal timely from the district court’s Memorandum Decision on Defendant’s Pending Motions. (R., pp.115-20.)

² As indicated above, in Mr. Jones’s direct appeal, he only challenged the length of his sentence. *See State v. Jones*, No. 40863, 2014 WL 280371.

ISSUE

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

ARGUMENT

The District Court Erred When It Denied Mr. Jones’s Idaho Criminal Rule 35(a) Motion To Correct An Illegal Sentence

Mr. Jones asserts the district court erred when it denied his Rule 35(a) motion to correct an illegal sentence. Rule 35(a) provides that, “The court may correct a sentence that is illegal from the face of the record at any time.” Generally, “it is a question of law as to whether a sentence is illegal or was imposed in a legal fashion,” and an appellate court “exercises free review over questions of law.” *State v. Lute*, 150 Idaho 837, 839 (2011).

The Idaho Supreme Court has held, “This Court has made clear that Rule 35 motions to correct an illegal sentence must be read narrowly and that under 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 (2015) (citing *State v. Clements*, 148 Idaho 82, 84-87 (2009)). “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 sentence.” *Id.* The *Wolfe* Court clarified “that Rule 35 inquiries must involve only questions of law—they may not include significant factual determinations to resolve the merits of a Rule 35 claim.” *Id.* “If a district court does inquire and make significant factual determinations, it exceeds its scope of authority under Rule 35.” *Id.*

Mindful of *Wolfe* and *Clements*, Mr. Jones asserts the district court erred when it denied his Rule 35(a) motion. As Mr. Jones asserted in the Rule 35(a) motion, his sentence is illegal because he had not been informed he could refuse to participate in the presentence investigation,

and he did not undergo a neuropsychological examination before sentencing. Thus, the district court erred when it denied Mr. Jones's Rule 35(a) motion.

CONCLUSION

For the above reasons, Mr. Jones respectfully requests that this Court vacate the district court's order denying his motions and remand the case for further proceedings.

DATED this 24th day of June, 2019.

/s/ Ben P. McGreevy
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June, 2019, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

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

BPM/eas