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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46786-2019
)	
v.)	JEROME COUNTY NO. CR-2013-1801
)	
CARL ROBERT BETANCOURT,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Carl R. Betancourt challenges the district court’s order denying numerous motions for resentencing, a new investigation, and correction of an illegal sentence pursuant to Idaho Criminal Rule 35(a) (“Rule 35(a”). Mindful of the jurisdictional and Rule 35(a) requirements, Mr. Betancourt maintains the district court erred by denying his motions.

Statement of Facts and Course of Proceedings

In July 2013, Mr. Betancourt pled guilty to one count of grand theft. (Aug. R., p.2.) In September 2013, the district court sentenced him to fourteen years, with two and one-half years fixed. (Aug. R., p.4.)

On February 4, 2019, Mr. Betancourt filed multiple pro se motions and filings: (1) motion for a stipulation to resentencing with a new presentence investigation report (“PSI”) due to lack of subject matter jurisdiction under Rule 35(a); (2) motion and affidavit to redact the PSI and, alternatively, to disqualify the district court judge; (3) motion and affidavit for forma pauperis; (4) a motion and memorandum for a confidential neuropsychological exam; (5) memorandum of neuropsychological facts; (6) motion and affidavit for conflict counsel; (7) motion to docket; (8) motion for a telephonic hearing; (9) motion for a status hearing; (10) motion for an evidentiary hearing; and (11) motion to transport for any proceedings (collectively, “resentencing motions”). (R., pp.13–76.)

On February 5, 2019, the district court issued an order denying Mr. Betancourt’s resentencing motions. (R., pp.78–79.) The district court denied the motions for lack of subject matter jurisdiction. The district court stated:

On September 9, 2013 a Judgment of Conviction was entered in the above-entitled matter on the felony charge of Grand Theft. . . . On October 23, 2013 the defendant filed a Rule 35 Motion which was denied on October 29, 2013. The defendant did not appeal his Judgment of Conviction and/or sentence nor did he appeal the denial of his Rule 35 Motion. The Court lost jurisdiction of this case once the time for appeal expired. “Absent a statute or rule extending its jurisdiction, the trial court’s jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal.” *State v. Jakoski*, 139 Idaho 352, 354, 79 P.3d 711, 713 (2003).

Therefore, the Defendant’s Motions filed on February 4, 2019 are DENIED, for lack of jurisdiction.

(R., p.79.) Mr. Betancourt timely appealed. (R., pp.82–85.)

ISSUE

Did the district court err when it denied Mr. Betancourt’s resentencing motions?

ARGUMENT

The District Court Erred When It Denied Mr. Betancourt's Resentencing Motions

Rule 35(a) states: “The court may correct a sentence that is illegal from the face of the record at any time.” I.C.R. 35(a). “Rule 35 is a ‘narrow rule.’” *State v. Clements*, 148 Idaho 82, 86 (2009) (quoting *State v. Farwell*, 144 Idaho 732, 735 (2007)). “Rule 35 is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal.” *Id.* “[T]he rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law” *Id.* Pursuant to Rule 35(a),

the term ‘illegal sentence’ . . . 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. The rule is limited to legal questions surrounding the defendant’s sentence, and any factual issues must be apparent from the face of the record.

State v. Meier, 159 Idaho 712, 713 (Ct. App. 2016) (citations omitted). In other words, “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). The appellate court exercises free review over a claim of an illegal sentence or a sentence imposed in an illegal manner. *Clements*, 148 Idaho at 84.

This Court also exercises free review over an issue of subject matter jurisdiction. *State v. Jones*, 140 Idaho 755, 757 (2004). “The indictment or information filed by the prosecution is the jurisdictional instrument upon which a defendant stands trial,” and that filing confers subject matter jurisdiction. *Id.* A valid guilty plea waives all non-jurisdictional defects. *State v. Schmierer*, 159 Idaho 768, 367 P.3d 163, 165 (2016). “This Court has long recognized that a court's jurisdiction to amend or set aside the judgment in a case does not continue forever.” *State v. Jakoski*, 139 Idaho 352, 354 (2003). “Absent a statute or rule extending its jurisdiction,

the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal." *Id.* at 355 (footnote omitted).

Mindful of the constraints of Rule 35(a) and jurisdictional principles, Mr. Betancourt argues the district court erred by denying his resentencing motions. Mr. Betancourt asserts he was not told by his counsel that he did not have to speak with the PSI investigator, which, among other errors, violated his fundamental and constitutional rights. (R., pp.13–17.) Because Mr. Betancourt was not told about his right to remain silent, he contended the district court should redact the PSI or appoint a new judge that had not reviewed the PSI. (R., pp.47–48, 49–50.) Mr. Betancourt also moved for a neuropsychological evaluation in light of the medical advances in understanding “frontal lobe immaturity.” (R., pp.54–66.) With evidence of “frontal lobe immaturity,” Mr. Betancourt argued he possibly would have received a lesser sentence. (R., p.57.) He also submitted the district court lacked subject matter jurisdiction because it relied on a tainted PSI. (R., pp.13–14.)

In light of this information, but mindful of binding legal principles, Mr. Betancourt asserts the district court erred because it denied his motions for lack of subject matter jurisdiction. (R., p.79.) Looking at the first motion specifically (motion for a stipulation to resentencing with a new PSI due to lack of subject matter jurisdiction), the district court erred because the district court, in fact, had subject matter jurisdiction over this motion. Mr. Betancourt's first motion was brought pursuant to Rule 35(a). (R., pp.13–17.) A Rule 35(a) motion can be raised “at any time.” I.C.R. 35(a). The district court therefore erred by denying that motion for lack of subject matter jurisdiction.

Although the district court erred by denying this motion for a jurisdictional reason, Mr. Betancourt remains mindful of Rule 35(a)'s requirement for illegality on the face of the record, without the need for an evidentiary hearing or finding significant questions of fact. *Wolfe*, 158 Idaho at 65. Nonetheless, he argues the district court erred by denying his first motion because newly discovered information, such as the need for a neuropsychological evaluation, rendered his sentence illegal and divested the district court of subject matter jurisdiction. (R., pp.13–17.)

Looking at Mr. Betancourt's other motions, but mindful of the jurisdictional limitations, Mr. Betancourt maintains the district court erred by ruling it lacked subject matter jurisdiction. As argued below, "without the courts granting his motions, there would be a continuance of 14 Amendment rights to 'due process' violations that were a result by assistance of 5th and 6th amendment violations." (R., p.14 (sic).) As such, Mr. Betancourt respectfully requests this Court reverse or vacate the district court's order denying his motions and remand his case to a different district court judge with instructions to redact the PSI, order a neuropsychological evaluation, and resentence him.

CONCLUSION

Mr. Betancourt respectfully requests this Court reverse or vacate the district court's order denying his motions for lack of subject matter jurisdiction.

DATED this 18th day of June, 2019.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th 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

JCS/eas