

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46786-2019
Plaintiff-Respondent,)	
)	Jerome County Case No.
v.)	CR-2013-1801
)	
CARL ROBERT BETANCOURT,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Betancourt failed to establish that the district court erred by denying his “resentencing motions”?

Betancourt Has Failed To Show Error In The District Court’s Denial Of His “Resentencing Motions”

In July 2013, Betancourt pled guilty to grand theft (in violation of I.C. § 18-2407(1)(b)) and, on September 9, 2013, the district court imposed a unified sentence of 14 years, with two and one-half years fixed. (Aug., pp.1-7.) More than five years later, on February 4, 2019,

Betancourt filed a Rule 35 motion “for resentencing” and several related motions, including a motion to redact the PSI and “alternative” motion to disqualify the district court judge; a motion “for forma pauperis”; a motion for a confidential neuropsychological examination at public expense; a motion for appointment of conflict counsel; a “motion to docket”; a motion for a telephonic hearing; a motion for a status hearing; a motion for an evidentiary hearing; and a motion to transport for any proceedings “if necessary.” (R., pp.13-48, 51-54, 68-76.) On February 5, 2019, the district court entered an order denying the motions “for lack of jurisdiction.” (R., pp.78-80.) Betancourt filed a notice of appeal timely from the district court’s order denying his motions. (R., pp.82-86.)

“Mindful of the constraints of Rule 35(a) and jurisdictional principles,” Betancourt asserts that the district court erred by denying his “resentencing motions” because, he claims, the district court “had subject matter jurisdiction” to rule on his Rule 35 motion “for resentencing,” “he was not told by his counsel that he did not have to speak with the PSI investigator,” and ““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.”” (Appellant’s brief, pp.3-5 (quoting R., p.14 (verbatim).) Betancourt has failed to show any basis for reversal of the district court’s order denying his “resentencing motions.”

“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, 355, 79 P.3d 711, 714 (2003) (footnote omitted). A motion to correct a sentence imposed in an illegal manner must be filed within 120 days. I.C.R. 35(b). A motion to “correct a sentence that is illegal from the face of the record” may be filed “at any time.” I.C.R. 35(a). Because

Betancourt's motion was filed well after the 120-day period had passed, the district court had jurisdiction only to review the legality of the sentence on "the face of the record."

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.

In this case, the judgment of conviction was entered on September 9, 2013, and Betancourt did not file a timely notice of appeal. (R., p.10; Aug., p.1.) Therefore, the judgment of conviction became final 42 days later, on October 21, 2013. On appeal, Betancourt contends that the district court erred by denying his "motion for a stipulation to resentencing with a new PSI due to lack of subject matter jurisdiction," filed on February 4, 2019, because the motion "was brought pursuant to Rule 35(a)" and the district court therefore "had subject matter jurisdiction over this motion." (Appellant's brief, p.4.) The state concedes that the district court had jurisdiction to rule on a Rule 35(a) motion for correction of an illegal sentence. See I.C.R. 35(a) ("The court may correct a sentence that is illegal from the face of the record at any time."). However, Betancourt's claims that he "was not told by his counsel that he did not have to speak with the PSI investigator" and that the district court should have ordered a neuropsychological examination (Appellant's brief, p.4) are not the proper subjects of a Rule 35(a) motion. The claims do not allege Betancourt's *sentence* is illegal from the face of the record. 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., State v.

Wolfe, 158 Idaho 55, 65, 343 P.3d 497, 507 (2015) (“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.”). Betancourt’s Rule 35 claims are, at best, claims that his sentence was imposed in an illegal manner, which had to be brought within 120 days. Because Betancourt’s claims do not fall within the ambit of I.C.R. 35(a), they could not be brought “at any time.” The district court therefore lacked jurisdiction to consider, much less grant, them.

In its order denying Betancourt’s Rule 35 motion and the related “resentencing motions,” the district court correctly concluded that it did not have jurisdiction to consider Betancourt’s motions. (R., p.79 (citing Jakoski, 139 Idaho at 354, 79 P.3d at 713 (“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.”).) Because the district court did not have jurisdiction to consider Betancourt’s motions, it did not err by denying the motions. Betancourt has therefore failed to show any basis for reversal of the district court’s order denying his “resentencing motions.”

Conclusion

The state respectfully requests this Court to affirm the district court’s order denying Betancourt’s “resentencing motions.”

DATED this 16th day of July, 2019.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of July, 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:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us.

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