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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	<b>NO. 46793-2019</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>ADA COUNTY NO. CR-FE-2014-18319</b>
<b>v.</b>	)	
	)	
<b>MATTHEW LEE ERICKSON,</b>	)	<b>APPELLANT'S BRIEF</b>
	)	
<b>Defendant-Appellant.</b>	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE STEVEN J. HIPPLER**  
**District Judge**

---

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## STATEMENT OF THE CASE

### Nature of the Case

Matthew Erickson appeals from the district court's order denying his motion to correct an illegal sentence. Mr. Erickson contends the district court erred when it denied his I.C.R. 35(a) motion to correct an illegal sentence because the district court's sentence violated his equal protection rights in that it resulted in a suspension of his driver's license both before and after he was released from incarceration. Mindful of *State v. Wolfe*, 158 Idaho 55, 65 (2015) (holding that an illegal sentence is one that is illegal from the face of the record, does not involve significant questions of fact, and does not require an evidentiary hearing); *State v. Clements*, 148 Idaho 82, 83 (2009) (holding the district court lacked authority under Rule 35 to examine the underlying facts of Clements's case); and *State v. Wilder*, 138 Idaho 644, 646 (Ct. App. 2003) (holding "The state of Idaho may subject this right [to drive a motor vehicle on public highways] to reasonable regulation, however, in the exercise of its police power"), Mr. Erickson asserts that the district court imposed an illegal sentence because it suspended his driver's license effective upon his release from incarceration. However, Mr. Erickson's driver's license is currently suspended. Thus, the court's order results in a driver's license suspension in excess of the statutory maximum.

### Statement of the Facts & Course of Proceedings

In 2016, Mr. Erickson was convicted of one count of DUI. (R., pp.117-121.) He was sentenced to ten years, with four years fixed.<sup>1</sup> (R., p.119.) His driver's license was suspended for five years, pursuant to I.C. § 18-8005. (R., p.119.) The judgment of conviction provided:

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<sup>1</sup> The sentence was to be served concurrently with Mr. Erickson's sentence in Ada County case number CR-FE-2005-1049. (R., p.131.)

“IT IS HEREBY ORDERED that the defendant’s driver’s license or permit is suspended for a period of five (5) years pursuant to I.C. § 18-8005, during which time Defendant shall have no driving privileges, to commence on the date of the Defendant’s release from incarceration, or upon conclusion of any other current driver’s license suspension.” (R., p.119.)

Mr. Erickson then filed a motion seeking relief under I.C.R. 35(a), asserting that the district court imposed an illegal sentence due to the unconstitutional suspension of his driver’s license. (R., pp.130-43.) Mr. Erickson also asserted that his Constitutional rights were violated when both counsel and the district court failed to inform him, prior to entering his guilty plea, that his five-year driver’s license suspension would apply both in the county jail and in the prison. (R., p.132.) Mr. Erickson further asserted that While in Idaho Department of Correction facilities, the inmates have “a right to apply for a driver’s license to be eligible as others to apply for prison employment that would require a driver’s license.” (R., p.132.)

Mr. Erickson filed several motions along with the Rule 35(a) motion. He filed, inter alia, a motion for the appointment of conflict counsel, a motion for a status or evidentiary hearing, a motion for transport, and a motion to compel. (R., pp.146-57.)

The district court denied Mr. Erickson’s Rule 35(a) motion. (R., pp.160-65.) The court found that a reasonable person with adequate means would not be willing to retain counsel at his own expense to conduct a further investigation into Mr. Erickson’s claims. (R. p.161.) The district court examined the judgement of conviction in which Mr. Erickson’s driver’s license was suspended for the maximum period of time allowed by statute, five years, to begin after his release from incarceration. (R., p.162.) The court speculated that Mr. Erickson’s driver’s license suspension “is likely the result of I.C. §18-8005(6)(c) which requires that repeat felony DUI offenders surrender their driver’s license upon conviction.” (R., p.162-63.) The court noted that

this statutory requirement is “a mandatory requirement separate and apart from the post-release driving privilege suspension.” (R., p.163.)

The district court examined Mr. Erickson’s constitutional claims—that the suspension of his license prior to his release from incarceration violated his rights to equal protection, due process, and to be free from double jeopardy—in light of his denial of his “right to apply for a driver’s license while in prison for prison employment.” (R., p.163.) The court concluded that Mr. Erickson had not identified the source of that right, thus the claim was a “vague assertion” and need not be entertained by the court. (R., p.163.) The court concluded that the constitutional claims failed on the merits because Mr. Erickson does not have a constitutional right to apply for prison driving jobs while incarcerated. (R., p.163.) As for the double jeopardy claim, the court found that the statutory requirement that a defendant surrender his driver’s license upon conviction is not duplicative of the court’s order of post-release suspension of driving privileges. (R., p.163.)

Regarding Mr. Erickson’s claim that his guilty plea was not knowingly, intelligently, and voluntarily made because he was never informed of the possibility that his driver’s license could be suspended before he was released from incarceration, the court concluded that this claim was not properly before it through a Rule 35(a) motion. (R., p.163.) Such a claim would be properly raised as part of a direct appeal or through post-conviction. (R., pp.163-64.) The district court denied Mr. Erickson’s motions requesting hearings at its discretion pursuant to *State v. Martinez*, 154 Idaho 940, 948 (Ct. App. 2013) and *Lamm v. State*, 143 Idaho 763 (Ct. App. 2006). (R., p.164.) The court also denied Mr. Erickson’s motion to proceed in forma pauperis after finding it moot. (R., p.164.)

Mr. Erickson timely appealed from the orders denying his Rule 35 motion, his motion to for hearing(s), and his motion to proceed in forma pauperis. (R., pp.166-70, 196-99.)

ISSUE

Did the district court err when it denied Mr. Erickson's Motion To Correct An Illegal Sentence?

## ARGUMENT

### The District Court Erred When It Denied Mr. Erickson's Motion To Correct An Illegal Sentence

#### A. Introduction

Mr. Erickson asserts that the district court erred when it denied his motions. Mindful of the decisions in *State v. Wolfe*, 158 Idaho 55, 65 (2015) (holding that an illegal sentence is one that is illegal from the face of the record, does not involve significant questions of fact, and does not require an evidentiary hearing), *State v. Clements*, 148 Idaho 82, 83 (2009) (holding the district court lacked authority under Rule 35 to examine the underlying facts of Clements's case), and *State v. Wilder*, 138 Idaho 644, 646 (Ct. App. 2003) (holding "The state of Idaho may subject this right [to drive a motor vehicle on public highways] to reasonable regulation, however, in the exercise of its police power"), Mr. Erickson asserts that the district court erred by denying his motion to correct an illegal sentence.

Mr. Erickson respectfully requests that this Court vacate the order denying his motion to correct an illegal sentence and order that his case be remanded with instructions to resentence him with only a one-year driver's license suspension.

#### B. Standard Of Review

Idaho Criminal Rule 35(a) permits a district court to correct an illegal sentence at any time. *State v. Clements*, 148 Idaho 82, 84 (2009). "[T]he term 'illegal sentence' under I.C.R. 35 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." *Id.* at 86. Generally, whether a sentence is illegal or was imposed in an illegal fashion is a question of law, over which an appellate court exercises free review. *Id.* at 84.

C. The District Court Erred When It Denied Mr. Erickson's Motion To Correct An Illegal Sentence

The Idaho Court of Appeals has held that the right to drive a motor vehicle on public highways is constitutionally protected, subject to reasonable state regulation:

In *Adams v. City of Pocatello*, 91 Idaho 99, 101, 416 P.2d 46, 48 (1966), the Court declared that the right to drive "is a right or liberty, the enjoyment of which is protected by the guarantees of the federal and state constitutions." Consequently, the courts of this state must regard the right to drive a motor vehicle on public highways as constitutionally protected. The state of Idaho may subject this right to reasonable regulation, however, in the exercise of its police power.

*State v. Wilder*, 138 Idaho 644, 646 (Ct. App. 2003).

Idaho Code § 18-8005(6)(d) provides that a person convicted for felony DUI:

Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind.

I.C. § 18-8005(6)(d). A suspension of driving privileges under this section is mandatory. *State v. Steelsmith*, 153 Idaho 577, 582 (Ct. App. 2012).

Mr. Erickson asserts that the district court erred in denying his motion to correct an illegal sentence, and he is entitled to a resentencing because the court imposed a sentence that is illegal on the face of the record where Mr. Erickson's driver's license was suspended prior to his sentencing, which resulted in constitutional violations.<sup>2</sup> (R., pp.132-37.) Mr. Erickson's five-year driver's license suspension pursuant to I.C. § 18-8005 was set by the district court to

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<sup>2</sup> It is not clear from the face of the record whether Mr. Erickson's driver's license was suspended as a condition of his parole (PSI, p.21), confiscated by the law enforcement officer who stopped him after he refused the breath analysis test (PSI, pp.3, 49), or whether, as the district court speculated, the driver's license was taken from Mr. Erickson at the time of his conviction (R., pp.162-63).

commence on the date he was released from incarceration; however, his license was suspended *while* he was incarcerated, in violation of his constitutional rights. (R., p.132.)

As he asserted in his motion:

Both Counsel and Court failed to disclose to this defendant his license would be held for this case almost if not double the time allowed by I.C. § 18-8005, which in this case becomes more than just double jeopardy and multiple punishment, since he has a right to apply for a driver's license while in prison for prison employment.

(R., p.133.) Mr. Erickson asserted that the district court's application of the statute effectively resulted in a suspension of his driver's license beyond the five years permitted by the statute.

(R., p.133.)

Mr. Erickson further asserts that, at sentencing, his defense counsel failed to advise Mr. Erickson that his driver's license would be suspended while he was incarcerated, as well as whatever term the district court suspended it for, after his release from incarceration.

(R., p.132)

Although this circumstance does not fall within the group of cases in which appellate courts have previously held constituted an illegal sentence, Mr. Erickson requests that his case be remanded for a new sentencing hearing due to the errors at his original sentencing hearing. Mindful of the Idaho Supreme Court's decisions in *Wolfe* and *Clements*, and the Idaho Court of Appeals' decision in *Wilder*, Mr. Erickson asks that this Court reverse the denial of his motions and remand the case to the district court with instructions to grant his Rule 35(a) motion and resentence him.

CONCLUSION

Mr. Erickson respectfully requests that this Court reverse the district court's order denying his Rule 35(a) motion and remand this case for further proceedings.

DATED this 8<sup>th</sup> day of November, 2019.

/s/ Sally J. Cooley  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8<sup>th</sup> day of November, 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](mailto:ecf@ag.idaho.gov)

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

SJC/eas