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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46881-2019
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2009-9562
)	
JUAN CARLOS ALDANA VILLANUEVA,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

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

In 2010, Villanueva pled guilty to second degree murder and the district court imposed a unified sentence of 28 years, with 20 years fixed. (R., pp.11-12.) Villanueva filed a timely Rule 35(b) motion for a reduction of sentence, which the district court denied. (R., pp.13-14.)

Villanueva appealed and, on October 4, 2011, the Idaho Court of Appeals affirmed Villanueva's conviction and sentence and the district court's order denying his Rule 35(b) motion for a reduction of sentence. State v. Villanueva, 2011 Unpublished Opinion No. 651, Docket No. 37904 (Idaho App., October 4, 2011).

More than six years later, on February 1, 2018, Villanueva filed a Rule 35(a) motion "for correction of illegal sentencing by means of violations of sentencing procedure and PSI consideration," claiming that his sentence is illegal because "he was not told by counsel that he did not have to speak with the PSI investigator" and because the district court should have ordered a confidential neuropsychological examination at public expense for consideration at sentencing. (R., pp.19-23 (bolding, capitalization and underlining omitted).) The district court denied the motion, finding that Villanueva had not shown that his sentence was illegal from the face of the record. (R., pp.70-72.) Villanueva filed a notice of appeal timely from the district court's order denying his Rule 35(a) motion for correction of an illegal sentence. (R., pp.73-76.)

Mindful of legal authority that forecloses his argument, Villanueva asserts that the district court erred by denying his Rule 35(a) motion for correction of an illegal sentence in light of his claims that "his trial counsel failed to tell him he did not have to speak with the presentence investigator," that "his right to due process was violated because exculpatory evidence was not presented to the district court prior to his sentencing," and that "he is entitled to a neuropsychological examination, and a new sentencing hearing." (Appellant's brief, p.3.) Villanueva has failed to show error in the denial of his Rule 35(a) motion for correction of an illegal sentence.

"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 Villanueva’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.

Villanueva’s claims that his trial counsel failed to inform him that he was not required to speak with the presentence investigator, that a neuropsychological examination was not ordered, and that “exculpatory evidence was not presented to the district court prior to his sentencing” (Appellant’s brief, p.3) are not the proper subjects of a Rule 35(a) motion. The claims do not allege that Villanueva’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., Wolfe, 158 Idaho at 65, 343 P.3d at 507 (“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.”). Villanueva’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 Villanueva’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.

Villanueva has not shown that his sentence is illegal, nor has he shown any other basis for reversal of the district court’s order denying his Rule 35(a) motion. Therefore, the district court’s order denying Villanueva’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 Villanueva’s Rule 35(a) motion for correction of an illegal sentence.

DATED this 1st day of October, 2019.

/s/ Kenneth Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

VICTORIA RUTLEDGE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of October, 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/ Kenneth Jorgensen
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