

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 46793-2019
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR-FE-2014-18319
)
 MATTHEW LEE ERICKSON,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF RESPONDENT

**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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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Matthew Lee Erickson appeals from the denial of his motion to correct an allegedly illegal sentence under Idaho Criminal Rule 35(a).

Statement Of The Facts And Course Of The Proceedings

Matthew Lee Erickson was charged with operating a motor vehicle under the influence of alcohol, charged as a felony pursuant to I.C. § 18-8005(9) due to a previous felony conviction for the same offense within the previous fifteen years. (R., pp. 76-77.) After initially pleading not guilty (R., p. 82), he later changed his plea (R., p. 101). The district court entered judgement and sentenced Erickson to ten years with four years fixed, to run concurrently with his sentence in another Ada County criminal case. (R., pp. 117-18.) The court also 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. However, after the completion of the first year of this suspension, the Defendant may apply to the Court for restricted privileges.

(R., p. 119.)

Erickson did not file a direct appeal. Approximately two and a half years after the district court entered his judgment of conviction and imposed sentence, he filed a motion under Idaho Criminal Rule 35(a). (R., pp. 130-38.) He argued that his driver's license suspension should start after his term of incarceration, permitting him to drive during it. (R., pp. 132-37.) Otherwise, he argued, the suspension would last longer than permitted by I.C. § 18-8005(6)(d); his plea would be involuntary, as he had not been informed that he would be unable to drive while in prison; he would be denied his right to apply for a driver's license while incarcerated in

order to secure a prison job requiring driving; the U.S. Constitution and Fourteenth Amendment would (somehow) be violated; and he would (somehow) be subject to double jeopardy and multiple punishments. (Id.) At the same time, Erickson filed motions to proceed in forma pauperis (R., pp. 146-48), for appointment of counsel (R., pp. 149-52), for a status hearing (R., p. 153), for an evidentiary hearing (R., p. 154), and for transportation (R., p. 155).¹

The district court denied his motion under Rule 35, along with the associated motions. (R., pp. 160-65.) With respect to the Rule 35 motion, the district court held that: (1) the suspension of driving privileges reflected in the record was to take effect on his release from incarceration, as required by statute and as Erickson was arguing it should (R., p. 162); (2) Erickson's "current lack of driving privileges is likely the result of I.C. § 18-8005(6)(c) which required—and still requires—that repeat felony DUI offenders surrender their driver's license upon conviction" (R., pp. 162-63); (3) Erickson's claims regarding some constitutional violation were vague, conclusory, and unsupported by any argument or authority (R., p. 163); (4) the constitutional arguments also fail on the merits, as there is no constitutional right to apply for a prison driving job, the state has an interest in regulating driving privileges for those convicted of DUIs, there is no equal protection violation as all DUI offenders are treated equally, and there is no double jeopardy violation as a "statutory requirement that Defendant surrender his driver's license upon conviction is not duplicative of the Court's order of post-release suspension of driving privileges" (id.); and any claim that his plea was not knowing, intelligent, and voluntary could not be raised on a Rule 35(a) motion, but should have been raised either on direct appeal or through a petition for post-conviction relief (R., pp. 163-64).

Erickson timely appealed. (R., pp. 166-70.)

¹ These motions are not at issue on appeal.

ISSUE

Erickson states the issue on appeal as:

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

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Erickson failed to show that the district court erred by denying his motion under Idaho Criminal Rule 35(a) to correct an allegedly illegal sentence?

ARGUMENT

The District Court Correctly Denied Erickson's Motion To Correct His Sentence

A. Introduction

The district court correctly concluded that the record reflects that Erickson's sentence is legal and his claims to the contrary are meritless. (R., pp. 160-65.) On appeal, mindful of the authority to the contrary, Erickson contends that his sentence is illegal on the face of the record because his "driver's license was suspended prior to his sentencing." (Appellant's brief, p. 7.) Because Erickson fails to show any error, the district court's order denying his motion should be affirmed.

B. Standard Of Review

"Idaho Criminal Rule 35(a) enables a trial court to correct a sentence that is 'illegal from the face of the record' at any time." State v. Herrera, 164 Idaho 440, 442, 431 P.3d 275, 277 (2018) (quoting I.C.R. 35(a)). "Whether this rule is implicated generally raises a question of law, for which this Court exercises free review." Id. (quoting State v. Passons, 163 Idaho 643, 645, 417 P.3d 240, 242 (2018)).

C. Erickson Has Not Shown That His Sentence Is Illegal On The Face Of The Record

Idaho Criminal Rule 35(a) is a narrow rule that allows a trial court to correct a sentence that is illegal from the face of the record at any time. State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009). "[T]he term 'illegal sentence,' as utilized by I.C.R. 35(a) 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, 218 P.3d at 1147. Rule

35(a) “is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal.” *Id.* (citation omitted).

Erickson’s claims regarding the illegality of his sentence focus on the allegation that “his license was suspended *while* he was incarcerated,” rather than beginning after his period of incarceration ended. (Appellant’s brief, p. 7 (emphasis in original).) But as Erickson acknowledges (Appellant’s brief, pp. 7-8), the district court’s sentencing order specifically provided that Erickson’s suspension was to begin on the date his period of incarceration ended (R., p. 119 (providing that suspension was “to commence on the date of the Defendant’s release from incarceration”)). Though Erickson complains that his driving privileges have been suspended during his period of incarceration, he also acknowledges that:

[i]t is not clear from the face of the record whether Mr. Erickson’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).

(Appellant’s brief, p. 7 n. 2.) Thus, the record does not reflect if, when, or why Erickson’s license was confiscated or suspended during his period of incarceration, and the only suspension reflected by the record was to begin after his period of incarceration. His sentence is not illegal from the face of the record.

But even if the record did reflect that the district court suspended Erickson’s license when he was convicted and as part of his sentence, Erickson would still have failed to show that his sentence was illegal. Erickson argues first that I.C. § 18-8005(6)(d) limits the suspension of driving privileges to a maximum period of five years. (Appellant’s brief, p 8.) That limitation, though, applies to the term of suspension that begins “after release from imprisonment.” I.C. § 18-8005(6)(d). A limitation on the length of the period of suspension following incarceration

says nothing about whether the court may also suspend privileges while the defendant is incarcerated. Further, the statute appears to reflect that the court both can and should suspend a defendant's driving privileges while incarcerated. I.C. § 18-8005(6)(c) requires the defendant to "surrender his driver's license or permit to the court" upon conviction. That provision apparently reflects a recognition that, upon conviction, the defendant loses his driving privileges.

Nor, as the district court correctly recognized (R., pp. 163-64), are there any viable constitutional arguments.

First, as below, Erickson has provided no authority or argument to substantiate any constitutional claim. "A party waives an issue cited on appeal if either authority or argument is lacking, not just if both are lacking." State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). He has therefore waived all of his constitutional claims. He points to no authority suggesting there is a constitutional right for a defendant convicted of DUI to retain driving privileges while incarcerated, that the suspension of driving privileges while incarcerated and for a period after incarceration would constitute double jeopardy, or that the Fourteenth Amendment is in any way implicated. The only constitutional claim raised below that Erickson even mentions on appeal involves the allegation that his attorney "failed to advise" him that his license would be suspended while incarcerated. (Appellant's brief, p. 8.) Whether that allegation is liberally construed as suggesting a claim of ineffective assistance of counsel or a claim that his plea was not knowingly, intelligently, and voluntarily entered, resolving either would require a reexamination of the facts underlying the case, which is not permitted under I.C.R. 35(a). Clements, 148 Idaho at 84, 218 P.3d at 1145. Erickson should have raised any claims relating to his plea agreement or guilty plea either on direct appeal, through a motion to withdraw his guilty

plea filed before the judgment of conviction became final, or in a post-conviction petition upon a showing that he could not have raised the claims earlier. I.C.R. 33(c); I.C. § 19-4901(b).

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Erickson's motion under Idaho Criminal Rule 35(a).

DATED this 2nd day of January, 2020.

/s/ Andrew V. Wake
ANDREW V. WAKE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of January, 2020, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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AVW/dd