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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46985-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2001-3
)	
NAZAR KHALED ALSANEA,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

ISSUE

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

ARGUMENT

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

A. Introduction

In 2001 (R., p. 8), a jury found Alsanea guilty of two counts of aggravated assault on a law enforcement officer, use of a firearm during the commission of a crime, violation of a no

contact order, and unlawful entry. State v. Alsanea, 138 Idaho 733, 737, 69 P.3d 153, 157 (Ct. App. 2003). The district court imposed consecutive sentences of 10 years fixed for the first count of aggravated assault on a law enforcement officer; 25 years, with 10 years fixed, for the second count of aggravated assault on a law enforcement officer, with a deadly weapon enhancement; one year indeterminate for violation of a no contact order; and six months indeterminate for unlawful entry. Id. at 737, 745, 69 P.3d at 157, 165. Alsanea appealed and the Idaho Court of Appeals affirmed his convictions and sentences. Id. at 746, 69 P.3d at 166.

In 2018, Alsanea filed a Rule 35 motion “for correction of illegal sentencing by means of violations of sentencing procedure and PSI consideration” and multiple related motions, including a motion for a confidential neuropsychological examination at public expense; a motion to redact the PSI and “alternative” motion to disqualify the district court judge; a motion “for forma pauperis”; a motion for appointment of conflict counsel; 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. 17-22, 36-37, 40-50.) The district court denied the motions, finding that Alsanea’s sentences are not illegal from the face of the record and that it was “without jurisdiction” to act on Alsanea’s request that the court “resentence him based on psychological studies.” (R., p. 80.) Alsanea filed a notice of appeal, deemed timely under the prison mailbox rule,¹ from the district court’s order denying his motions. (R., pp. 83-86; Order Withdrawing Remittitur and Reinstating Appeal.)

“Mindful of the constraints of Rule 35(a) and jurisdictional principles,” Alsanea asserts that the district court erred by denying his “resentencing motions.” (Appellant’s brief, p. 4.)

¹ The mailbox rule deems a pro se inmate’s document filed as of the date it was submitted to prison authorities for filing with the court. State v. Johnson, 152 Idaho 56, 62, 266 P.3d 1161, 1167 (Ct. App. 2011) (citing Munson v. State, 128 Idaho 639, 641, 917 P.2d 796, 798 (1996)).

Alsanea has failed to show any basis for reversal of the district court’s order denying his “resentencing motions.”

B. Standard Of Review

“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 Alsanea’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.”

C. Alsanea Has Shown No Abuse Of The District Court’s Discretion

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.

Alsanea argues that the district court erred by denying his “resentencing motions” because, he claims, “his trial counsel did not tell him that he did not have to speak with the PSI investigator” and because the purported “need for a neuropsychological evaluation” rendered his sentences illegal. (Appellant’s brief, p. 4.) Alsanea’s claims are not the proper subjects of a

Rule 35(a) motion. The claims do not allege that Alsanea's *sentences* are 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 his sentences*. 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."). Alsanea's Rule 35 claims are, at best, claims that his sentences were imposed in an illegal manner, which had to be brought within 120 days. Because Alsanea'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 or grant them.

Alsanea has not shown that his sentences are illegal. In its order denying Alsanea's Rule 35 motion and the related "resentencing motions," the district court correctly concluded that Alsanea's sentences are not illegal from the face of the record and that it was "without jurisdiction to resentence the Defendant" (R., p. 80). 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 Alsanea's motions, it did not err by denying the motions. Alsanea 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 Alsanea's "resentencing motions."

DATED this 8th day of January, 2020.

/s/ Kenneth K. Jorgensen
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VICTORIA RUTLEDGE
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of January, 2020, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

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