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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46985-2019
)	
v.)	ADA COUNTY NO. CR-FE-2001-3
)	
NAZAR KHALED ALSANEA,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Nazar Khaled Alsanea challenges the district court's order denying his multiple motions for resentencing, a new investigation, and the correction of an illegal sentence pursuant to Idaho Criminal Rule 35(a) ("Rule 35(a)"). Mindful of the jurisdictional and Rule 35(a) requirements, Mr. Alsanea nonetheless maintains that the district court erred by denying his motions.

Statement of Facts and Course of Proceedings

In 2001, the district court sentenced Mr. Alsanea to an aggregate term of thirty-six and one-half years, with twenty years fixed, for 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 (Ct. App. 2003). (See R., pp.8–9 (register of actions).) On appeal, the Court of Appeals affirmed his judgment of conviction and sentences. *Alsanea*, 138 Idaho at 745–46.

On April 12, 2018, Mr. Alsanea filed multiple pro se motions and filings: (1) motion to docket; (2) motion for correction of an illegal sentence pursuant to Rule 35(a); (3) a motion and memorandum for a confidential neuropsychological exam; (4) memorandum of neuropsychological facts; (5) motion and affidavit to redact the presentence investigation report (“PSI”) and, alternatively, to disqualify the district court judge; (6) motion and affidavit for forma pauperis; (7) motion and affidavit for conflict counsel; (8) motion for a telephonic hearing; (9) motion for a status hearing; (10) motion for an evidentiary hearing; and (11) motion to transport for any proceedings (collectively, “resentencing motions”). (R., pp.16–50.) He also included various articles and studies on adolescent brain development. (R., pp.51–78.)

On October 4, 2018, the district court issued an order denying Mr. Alsanea’s resentencing motions. (R., p.80) The district court stated:

On April 12, 2018 Alsanea filed a barrage of motions, which appear to relate to a Rule 35(a) motion to correct an illegal sentence. Alsanea moves the Court for relief under ICR 35(a), which allows the Court to correct a facially illegal sentence at any time. However, he does not make his motion based on the illegality being apparent from the face of the sentence, rather he is requesting the Court resentence him based on psychological studies. The Court is without jurisdiction to resentence the Defendant. The sentence is not illegal on its face. The Motion to Dismiss under Rule 35(a) is DENIED. All other motions filed that same date are also DENIED.

(R., p.80.) Mr. Alsanea timely appealed.¹ (R., pp.82–86.)

¹ This Court initially dismissed Mr. Alsanea’s appeal as untimely, but later reinstated his appeal upon review of Mr. Alsanea’s mail log. *Order Withdrawing Remittitur and Reinstating Appeal, State v. Alsanea*, No. 46985-2019 (Aug. 27, 2019)

ISSUE

Did the district court err when it denied Mr. Alsanea's resentencing motions?

ARGUMENT

The District Court Erred When It Denied Mr. Alsanea's Resentencing Motions

Rule 35(a) states: "The court may correct a sentence that is illegal from the face of the record at any time." I.C.R. 35(a). "Rule 35 is a 'narrow rule.'" *State v. Clements*, 148 Idaho 82, 86 (2009) (quoting *State v. Farwell*, 144 Idaho 732, 735 (2007)). "Rule 35 is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal." *Id.* "[T]he rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law" *Id.* Pursuant to Rule 35(a),

the term 'illegal sentence' . . . 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. The rule is limited to legal questions surrounding the defendant's sentence, and any factual issues must be apparent from the face of the record.

State v. Meier, 159 Idaho 712, 713 (Ct. App. 2016) (citations omitted). In other words, "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." *State v. Wolfe*, 158 Idaho 55, 65 (2015). The appellate court exercises free review over a claim of an illegal sentence or a sentence imposed in an illegal manner. *Clements*, 148 Idaho at 84.

This Court also exercises free review over an issue of subject matter jurisdiction. *State v. Jones*, 140 Idaho 755, 757 (2004). "The indictment or information filed by the prosecution is the jurisdictional instrument upon which a defendant stands trial," and that filing confers subject matter jurisdiction. *Id.* "This Court has long recognized that a court's jurisdiction to amend or set aside the judgment in a case does not continue forever." *State v. Jakoski*, 139 Idaho 352, 354

(2003). “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.” *Id.* at 355 (footnote omitted).

Mindful of the constraints of Rule 35(a) and jurisdictional principles, Mr. Alsanea argues that the district court erred by denying his resentencing motions. Mr. Alsanea asserts that his trial counsel did not tell him that he did not have to speak with the PSI investigator, which, among other errors, violated his fundamental and constitutional rights. (R., pp.18–20.) In addition, because counsel did not tell Mr. Alsanea about his right to remain silent, he contended that the district court should redact the PSI or appoint a new judge that had not reviewed the PSI. (R., pp.36–37, 38–39.) Mr. Alsanea requested a new PSI, conflict counsel, and a confidential neuropsychological exam. (R., pp.21, 22.) He also asserted that a new neuropsychological exam was necessary to detect frontal lobe immaturity. (R., pp.23–32.) With evidence of “frontal lobe immaturity,” Mr. Alsanea argued that he possibly would have received a lesser sentence. (R., p.25.)

In light of this information, but mindful of binding legal principles, Mr. Alsanea asserts that the district court erred for denying his motions on the basis that it lacked jurisdiction to resentence him based on psychological studies. (R., p.80.) Mr. Alsanea is mindful of Rule 35(a)’s requirement for illegality on the face of the record, without the need for an evidentiary hearing or finding significant questions of fact. *Wolfe*, 158 Idaho at 65. He is also mindful of the jurisdictional limitations to challenge a sentence. *Jakoski*, 139 Idaho at 355. Nonetheless, he argues that the district court erred by denying his motions because the newly discovered information, such as the need for a neuropsychological evaluation, rendered his sentence illegal and required new evaluations to sentence him appropriately. (R., pp.17–21, 23–26, 27–37.) As

Mr. Alsanea argued below, “without the courts attention in GRANTING his motions there would be a continuance of 14th, Amendment rights to ‘Due Process,’ violations that were a result by assistance of 5th and 6th amendment violations.” (R., p.18 (sic).) Therefore, Mr. Alsanea respectfully requests that this Court reverse or vacate the district court’s order denying his resentencing motions and remand his case to a different district court judge with instructions to redact the PSI, order a neuropsychological evaluation, and resentence him.

CONCLUSION

Mr. Alsanea respectfully requests this Court reverse or vacate the district court’s order denying his resentencing motions.

DATED this 12th day of December, 2019.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 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

/s/ Evan A. Smith

EVAN A. SMITH
Administrative Assistant

JCS/eas