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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47295-2019
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY
v.)	NO. CR-2014-12107
)	
LARRY ALAN TAYLOR,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>		

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

**HONORABLE JOHN T. MITCHELL
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

Larry Taylor appeals, asserting the district court erred by denying his motion to correct an illegal sentence under I.C.R. 35(a).

Statement of the Facts and Course of Proceedings

The State initially charged Mr. Taylor with four counts of grand theft by extortion in this case. (Supp. R., p.39.)¹ One of the charges was dismissed by the district court for lack of sufficient evidence at the preliminary hearing and another was dismissed as part of the plea agreement in this case. (See Supp. R., pp.79, 91-92.)

As to the two remaining charges, Mr. Taylor moved to dismiss because they alleged the same conduct. (Supp. R., pp.58-59.) Specifically, he argued, at the preliminary hearing, the alleged victim had testified that Mr. Taylor had called her on the day in question and left the threatening message. (Supp. R., pp.58-59 (citing Preliminary Hearing Transcript, p.41).)² When the voicemail recording automatically cut him off, he immediately called back and continued to deliver the threatening message. (Supp. R., pp.58-59 (citing Preliminary Hearing Transcript, p.41).) The district court denied that motion, holding that each telephone call was a distinct act which could support separate charges. (Supp. R., p.78.)

¹ The Idaho Supreme Court ordered the record in this case be augmented with the record from Mr. Taylor's prior appeal in Docket No. 42897. To promote clarity, citations to the record from Docket No. 42897 will be identified as "Supp. R." and citations to the record prepared for this appeal will simply be identified as "R."

² The preliminary hearing transcript is part of the record in Docket No. 42897 in the electronic pdf document "LARRY ALAN TAYLOR CR14-12107 TRANSCRIPT."

Following Mr. Taylor's guilty pleas to the two remaining charges, the district court imposed a unified sentence of ten years, with three years fixed,³ on the first of the two charges and a consecutive unified sentence of ten years, with zero years fixed, for the second. (Supp. R., pp.98-100.) Mr. Taylor filed a notice of appeal from that judgment of conviction. (Supp. R., pp.101-03.) In that appeal, Mr. Taylor argued that the judge had imposed an excessive sentence and the Court of Appeals affirmed. (R., pp.47-50 (the Court of Appeals' unpublished opinion).)

Relevant to this appeal, Mr. Taylor subsequently filed a motion alleging his sentence was illegal, arguing that the maximum lawful aggregate sentence was ten years because the two remaining charges should have constituted a single offense under I.C. § 18-2401. (R., p.118.) The district court denied that motion, holding that, where there was conduct constituting separate instances of theft, multiple charges could be upheld under that statute. (R., p.125.) Mr. Taylor filed a notice of appeal timely from the order denying that motion. (R., pp.127-29.)

³ Initially, the district court imposed a sentence with four years fixed and six years indeterminate, but it modified that sentence pursuant to Mr. Taylor's motion for leniency under I.C.R. 35(b). (See 42897 R., pp.108-09, 121-23.)

ISSUE

Whether the district court erred by denying Mr. Taylor's motion to correct an illegal sentence under I.C.R. 35(a).

ARGUMENT

The District Court Erred By Denying Mr. Taylor's Motion To Correct An Illegal Sentence Under I.C.R. 35(a)

Mindful of the Idaho Supreme Court's decision in *State v. Clements*, 148 Idaho 82 (2009), Mr. Taylor maintains the maximum lawful aggregate sentence in his case was ten years because the two charges in his case should have been consolidated under to I.C. § 18-2401. *See State v. Sieber*, 117 Idaho 637, 638-39 (Ct. App. 1989) (noting that, in *State v. Major*, 111 Idaho 410, 414-15 (1986), the Supreme Court held that the act of taking property and the act of possessing that property at another location "was, in effect, the same crime" under I.C. § 18-2401).

CONCLUSION

Mr. Taylor respectfully requests this Court reverse the order denying his I.C.R. 35(a) motion and remand this case for further proceedings.

DATED this 20th day of March, 2020.

/s/ Brian R. Dickson
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 2020, 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

BRD/eas