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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47348-2019
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-FE-2012-6396
)	
ANDREA SUE DYAS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Dyas failed to establish that the district court erred by denying her Rule 35(a) motion for correction of an illegal sentence?

Dyas Has Failed To Show Error In The District Court's Denial Of Her Rule 35(a) Motion For Correction Of An Illegal Sentence

In 2012, the state charged Dyas with possession of methamphetamine and possession of marijuana. (R., pp. 24-25.) Pursuant to a plea agreement, Dyas pled guilty to possession of methamphetamine and the state dismissed the remaining charge. (R., p. 28.) The district court

imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp. 39-42.) Following the period of retained jurisdiction, the district court suspended Dyas's sentence and placed her on supervised probation for seven years. (R., pp. 46-53.) After Dyas violated her probation, the district court revoked Dyas's probation and executed a reduced unified sentence of seven years, with one and one-half years fixed. (R., pp. 80-84.) Dyas filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp. 79, 85-86.)

Approximately six years later, on June 7, 2019, Dyas filed a Rule 35(a) motion for correction of an illegal sentence, claiming that her sentence was illegal because she "entered a plea to use-under the influence ... which exceeds the max as pursuant to I 37-2732C use or under the influence." (R., pp. 87-89.) On July 17, 2019, the district court entered an order denying Dyas's Rule 35(a) the motion, correctly finding that Dyas "pled guilty to and was found guilty of possession of a controlled substance in violation of Idaho Code Section 37-2732(c)," that "the permissible sentence was not more than seven (7) years," and that Dyas's unified sentence of seven years, with one and one-half years fixed, "was not illegal." (R., pp. 103-06.) Dyas filed a notice of appeal timely, under the prison mailbox rule,¹ from the district court's order denying her Rule 35(a) motion. (R., pp. 113-16.)

Mindful of legal authority that forecloses her argument, Dyas nevertheless asserts that the district court erred by denying her Rule 35(a) motion for correction of an illegal sentence, arguing as she did below that her sentence is illegal "because the term exceeded the maximum

¹ Under the "mailbox rule," notices of appeal filed by inmates are deemed to be filed on the date they are delivered to prison officials 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)).

allowed sentence for the crime for which she was convicted.” (Appellant’s brief, pp. 4-5.) Dyas has failed to show error in the denial of her Rule 35(a) motion for correction of an illegal sentence.

Pursuant to Idaho Criminal Rule 35, a district court may correct a sentence that was imposed in an illegal manner within 120 days of the entry of the judgment imposing sentence or order releasing retained jurisdiction. I.C.R. 35(b). The court may, however, correct a sentence that is “illegal from the face of the record at any time.” I.C.R. 35(a). Because these filing limitations are jurisdictional, the district court lacks jurisdiction to grant any motion requesting relief that is filed after the time limit proscribed by the rule. State v. Sutton, 113 Idaho 832, 748 P.2d 416 (Ct. App. 1987). Because Dyas’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.”

“[T]he interpretation of ‘illegal sentence’ under Rule 35 is limited to sentences that are illegal from the face of the record, i.e., those sentences that do not involve significant questions of fact nor an evidentiary hearing to determine their illegality.” State v. Clements, 148 Idaho 82, 87, 218 P.3d 1143, 1148 (2009). A sentence is “illegal” within the meaning of Rule 35 only if it is in excess of statutory limits or otherwise contrary to applicable law. State v. Peterson, 148 Idaho 610, 613, 226 P.3d 552, 555 (Ct. App. 2010) (citing State v. Alsanea, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003)). “[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.

Dyas’s claim that her sentence is illegal “because the term exceeded the maximum allowed sentence for the crime for which she was convicted” (Appellant’s brief, p. 5) is without

merit. In her Rule 35(a) motion, Dyas claimed that she “entered a plea to use-under the influence” and cited entries on “a page from her case summary” to support her claim. (R., pp. 88-90.) Dyas’s reliance on “a page from her case summary” is misplaced, however, as the “case summary” is neither a judgment nor an order imposing sentence. Furthermore, in the Guilty Plea Advisory and Form, which was signed and initialed by Dyas, Dyas acknowledged that the maximum possible penalty for the crime to which she was pleading guilty – a “controlled substance violation” – was “7 years” (R., pp. 29-36), which does not support her claim that she pled guilty to the misdemeanor crime of “use-under the influence” (R., p. 88). Moreover, Dyas concedes, on appeal, that she was charged with, pled guilty to, and was convicted of “Count I, possession of a controlled substance, felony, I.C. § 37-2732(c).” (Appellant’s brief, pp. 1-2.) Indeed, Dyas was charged, in Count I, with felony possession of a controlled substance: “Methamphetamine and/or Amphetamine, a Schedule II controlled substance,” in violation of I.C. § 37-2732(c). (R., pp. 24-25, 28, 39-42.) Pursuant to Idaho Code Section 37-2732(c), the penalty for possession of “a controlled substance classified in schedule II” is “not more than seven (7) years.” I.C. § 37-2732(c)(1). Dyas’s sentence thus falls within the statutory guidelines, and she has not shown that the sentence is otherwise contrary to applicable law.

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

DATED this 11th day of March, 2020.

/s/ Kenneth K. Jorgensen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of March, 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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