

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 47566-2019
 Plaintiff-Respondent,)
) Shoshone County Case No.
 v.) CR40-19-218
)
 STANLEY CLARK RADFORD,)
)
 Defendant-Appellant.)
)
 _____)

BRIEF OF RESPONDENT

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

HONORABLE SCOTT L. WAYMAN
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

COLLEEN D. ZAHN
Deputy Attorney General
Chief, Criminal Law Division

KACEY L. JONES
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534
E-mail: ecf@ag.idaho.gov

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

BEN P. McGREEVY
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712
E-mail: documents@sapd.state.id.us

**ATTORNEY FOR
DEFENDANT-APPELLANT**

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STATEMENT OF THE CASE

Nature Of The Case

Stanley Clark Radford appeals from his sentence of three years with one year fixed following his plea of guilty to attempted destruction of evidence, arguing the sentence is illegal.

Statement Of The Facts And Course Of The Proceedings

The state charged Radford with possession of methamphetamine, destruction of evidence, possession of paraphernalia, and obstruction. (R., pp.9-11.) Following a preliminary hearing, Radford was bound over to the district court on the charges, although the magistrate court determined that the state could proceed on the destruction of evidence charge only as an attempt. (See R., pp.76-77.) Thereafter, the state filed an Information reflecting the charge of attempted destruction of evidence. (R., pp.80-81.)

Pursuant to a plea agreement, Radford pled guilty to attempted destruction of evidence and the state dismissed the remaining charges. (See R., pp.115-23; Tr., p.34, Ls.7-25.) At the change of plea hearing, the district court informed Radford of the maximum potential penalty: “Looking at the statute, it looks like the maximum penalty with the attempted charge are two and a half years and \$5,000 fine.” (Tr., p.35, Ls.15-17; p.40, Ls.3-4.) Radford and the state agreed. (Tr., p.35, Ls.17-20.) The district court accepted Radford’s guilty plea to the charge of “attempted concealment of evidence” and set a date for sentencing. (Tr., p.41, Ls.12-23.)

A different judge presided over the sentencing hearing. As the district court was announcing its sentence, it stated: “the charge that you pled guilty to is destruction of evidence.” (Tr., p.58, Ls.18-19.) Radford interjected: “Attempted.” (Tr., p.58, L.20.) The district court responded: “Attempted destruction is the same as destruction of evidence. That’s the nature of

the charge. It's not an attempt. That's the offense. And that has a maximum penalty of five years[.]” (Tr., p.58, Ls.22-25.) Thereafter, the district court sentenced Radford to three years with one year fixed and retained jurisdiction. (R., pp.126-30; Tr., p.59, Ls.8-11.) Radford filed a timely notice of appeal. (R., pp.141-43, 156-59.)

Radford filed a motion for reconsideration of his sentence, pursuant to I.C.R. 35. (R., p.151.) In his motion, Radford requested leniency, specifically conceding the legality of his sentence: “While the Defendant concedes that the Court’s sentence was not illegal, nor illegally imposed, the Defendant asks the Court to reduce the sentence imposed against him....” (R., p.151.) The district court denied the motion.¹ (R., p.162.)

¹ Following his rider review, the district court placed Radford on a two-year period of supervised probation. (Aug., pp.1-4.)

ISSUE

Radford states the issue on appeal as:

Did the district court err when it imposed an illegal sentence, because the court did not have discretion to impose Mr. Radford's three-year sentence, which is longer than the two and one-half year maximum sentence authorized for felony attempted destruction of evidence?

(Appellant's brief, p.5.)

The state rephrases the issue as:

Is Radford's claim that his sentence is illegal unpreserved because he did not raise the issue before the district court in his Rule 35 motion?

ARGUMENT

Radford's Claim That His Sentence Is Illegal Is Not Properly Before This Court Because It Was Not Raised In His Rule 35 Motion

A. Introduction

Radford claims that the sentence imposed by the district court is illegal because it exceeds the statutory maximum sentence for attempted destruction of evidence. (Appellant's brief, pp.6-9.) His claim is unpreserved. Although Rule 35(a) provides the proper vehicle for Radford to move the district court to correct an illegal sentence "at any time," Radford has not filed such a motion. Instead, Radford filed a Rule 35 motion asking for leniency in which he specifically conceded that his sentence was not illegal. (R., p.151.) Because Radford did not challenge the legality of his sentence before the district court, his claim is not preserved for appellate review.

B. Standard Of Review

This Court reviews the length of a sentence for an abuse of discretion. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). "The determination of whether a sentence is illegal involves a question of law over which our appellate courts exercise free review." State v. Wood, 125 Idaho 911, 913, 876 P.2d 1352, 1354 (1993).

C. Radford's Claim Is Unpreserved

"A claim that a sentence is illegal may not be raised for the first time on appeal without the trial court having had an opportunity to consider the legality of the terms of the sentence." State v. Sellers, 161 Idaho 469, 483, 387 P.3d 137, 151 (Ct. App. 2016); see also State v. Howard, 122 Idaho 9, 10, 830 P.2d 520, 521 (1992). Such a challenge must first be raised before the district court by a motion pursuant to Idaho Criminal Rule 35(a), which allows a district court

to correct an illegal sentence “at any time,” including in a second Rule 35 motion. State v. Wolfe, 158 Idaho 55, 62-63, 343 P.3d 497, 504-05 (2015). “If objection to the illegality of a sentence has not been otherwise raised before the trial court by either the state or the defendant, it may not be raised for the first time on appeal.” State v. Lavy, 121 Idaho 842, 845, 828 P.2d 871, 874 (1992) (quoting State v. Martin, 119 Idaho 577, 579, 808 P.2d 1322, 1324 (1991)).

This Court should decline to consider Radford’s claim that his sentence is illegal because it was not made below. Idaho Criminal Rule 35(a) provides the proper mechanism for Radford to challenge his sentence. However, in his Rule 35 motion, Radford not only failed to challenge the legality of his sentence, he specifically conceded that the sentence was not illegal: “the Defendant concedes that the Court’s sentence was not illegal, nor illegally imposed....”² (R., p.151.) Because Radford did not challenge the legality of his sentence below, the district court did not have the opportunity to rule on the issue. Thus, it is not properly preserved for appeal and this Court should decline to address the merits of Radford’s claim.

² Because Radford conceded the legality of his sentence below, his claim before this Court is also barred by the doctrine of invited error. “The doctrine of invited error applies to estop a party from asserting an error when his or her own conduct induces the commission of the error.” State v. Norton, 151 Idaho 176, 187, 254 P.3d 77, 88 (Ct. App. 2011) (citing State v. Atkinson, 124 Idaho 816, 819, 864 P.2d 654, 657 (Ct. App. 1993)). “One may not complain of errors one has consented to or acquiesced in.” Id. (citing State v. Caudill, 109 Idaho 222, 226, 706 P.2d 456, 460 (1985); State v. Lee, 131 Idaho 600, 605, 961 P.2d 1203, 1208 (Ct. App. 1998)). That being said, the state does not take the position that the invited error doctrine would prevent Radford from arguing the illegality of his sentence in a Rule 35(a) motion.

CONCLUSION

The state respectfully requests this Court affirm the judgment of conviction.

DATED this 19th day of August, 2020.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of August, 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:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER
documents@sapd.state.id.us

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

KLJ/dd