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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>STATE OF IDAHO,</b>	)	
	)	<b>NO. 48378-2020</b>
<b>Plaintiff-Respondent,</b>	)	
	)	<b>ADA COUNTY NO. CR01-18-32652</b>
<b>v.</b>	)	
	)	
<b>TYLER SHAWN CLAPP,</b>	)	<b>APPELLANT'S BRIEF</b>
	)	
<b>Defendant-Appellant.</b>	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE RONALD J. WILPER**  
District Judge

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## STATEMENT OF THE CASE

### Nature of the Case

Tyler Clapp appeals, contending the district court erred in denying his motion to correct an illegal sentence under I.C.R. 35(a) (“Rule 35(a)”).

### Statement of the Facts and Course of Proceedings

A jury found Mr. Clapp guilty of driving under the influence and of being a persistent violator. (Supp. R., p.384.)<sup>1</sup> At the sentencing hearing, defense counsel argued that the district court should not execute Mr. Clapp’s sentence, in part, because not executing that sentence would allow Mr. Clapp to get the mental health treatment recommended by the psychological evaluation. (Supp. Tr., p.480, Ls.5-17.) As it imposed Mr. Clapp’s sentence, the sentencing court stated:

In imposing this sentence, I am aware that Mr. Clapp has a long history of depression and severe anxiety, that he is treating through the use of alcohol. I did read the recommendations of Melinda Jorgensen, the clinical neuropsychologist. I see that Mr. Clapp should have a sleep study and lots of support on supervision, clonidine, Trazodone, and vocational rehabilitation. I think those are all good and desirable things for Mr. Clapp when he gets out on parole.

(Supp. Tr., p.491, Ls.6-16.) When the sentencing judge asked if she had missed anything while imposing the sentence, Mr. Clapp noted, “I would just like to state that the treatment recommendations by Dr. Johnson are not available in prison. I believe that is it.” (Supp. Tr., p.492, Ls.13-16.) The sentencing court ultimately imposed and executed a unified sentence of fifteen years, with five years fixed. (Supp. Tr., p.490, Ls.18-25.) However, it did not include

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<sup>1</sup> The Supreme Court augmented the record in this appeal with the record prepared in Docket Number 47698. (R., p.52.) To avoid confusion, citations to “Supp.” will refer to the transcripts and record prepared in Docket Number 47698.

an authorization for treatment in the resulting judgment of conviction. (*See generally* Supp. R., pp.667-69.)

Subsequently, Mr. Clapp fired his attorney (*see* R., p.26), and filed a *pro se* motion to correct an illegal sentence under “Rule 35(a). (R., pp.28-34.) In that motion, he argued, *inter alia*, that the judgment of conviction was erroneous because, even though the sentencing judge had concluded he suffered from treatable mental health issues, it did not include authorization for mental health treatment as required by I.C. § 19-2523(2). (R., p.30.) He also noted that the mental health evaluation had concluded, without treatment for those conditions, he was a moderate to high risk to continue suffering from symptoms of those conditions. (R., p.31.) Moreover, he noted the mental health evaluation’s conclusion that, if he received treatment, such as individual and group psychotherapy and substance abuse treatment, it would reduce his risk for recidivism. (R., p.31.) However, Mr. Clapp also recognized that some of the recommended treatments, such as the sleep study, were not available in the prison setting. (R., p.31.)

The district court denied Mr. Clapp’s Rule 35(a) motion. (R., pp.37-40.) With respect to his argument about the sentencing court not authorizing treatment, the district court decided it was not necessary for the sentencing court to authorize treatment because it “did not conclude by clear and convincing evidence, after the sentencing hearing, that treatment for mental illness was necessary.” (R., pp.39-40.) It also pointed out that the sentencing court could not require the Department of Correction to provide particular treatment opportunities. (R., p.40.)

Mr. Clapp filed a new notice of appeal timely from the order denying his Rule 35(a) motion. (R., pp.42-44.)

ISSUE

Whether the district court erred by denying Mr. Clapp's Rule 35(a) motion.

## ARGUMENT

### The District Court Erred By Denying Mr. Clapp's Rule 35(a) Motion

#### A. Standard Of Review

Rule 35(a) is a narrow rule that allows the district court to correct a sentence that is illegal from the face of the record. *State v. Clements*, 148 Idaho 82, 86 (2009). This means issues raised under Rule 35(a) do not involve significant questions of fact or require evidentiary hearings. *Id.*; accord *State v. Ramsey*, 159 Idaho 635, 636 (Ct. App. 2015) (citing *Clements*, 148 Idaho at 88, for the proposition that Rule 35(a) “is limited to legal questions surrounding the defendant’s sentence, and any factual issues must be apparent from the face of the record.”). As such, Rule 35(a) motions only involve questions of law, and therefore, decisions on such motions are freely reviewed on appeal. *Ramsey*, 159 Idaho at 636.

#### B. The District Court's Failure To Authorize Treatment Pursuant To I.C. § 19-2523(2) Was Error Clear From The Face Of The Record

Mr. Clapp is mindful that the district court’s failure to authorize treatment under I.C. § 19-2523(2) does not necessarily make the overall sentence itself unlawful. *See* I.C. § 19-2523(3) (“In addition to the authorization of treatment, the court shall pronounce sentence as provided by law.”); *but see Ramsey*, 159 Idaho at 636 (citing *Clements*, 148 Idaho at 88, for the proposition that Rule 35(a) “is limited to legal questions surrounding the defendant’s sentence, and any factual issues must be apparent from the face of the record.”). Nevertheless, Mr. Clapp maintains that the district court erred by denying his Rule 35(a) motion because the judgment of conviction does not specifically authorizing treatment as required by I.C. § 19-2523(2). He maintains that the district court was required to authorize treatment because, at the sentencing hearing, it actually acknowledged Mr. Clapp suffers from mental health issues which can be



treated. See I.C. § 19-2523(2) (“The court shall authorize treatment during the period of confinement . . . if, after the sentencing hearing, it concludes that” the defendant suffers from a severe and diagnosable mental illness, and that treatment is available for that condition, and without such treatment there was a risk of major distress to the defendant); compare *State v. Leach*, 135 Idaho 525, 532 (Ct. App. 2001) (holding, on direct appeal, that the district court’s failure to actually authorize treatment at the Department of Correction’s discretion in the order revoking probation was error under I.C. § 19-2523(2) which needed to be corrected on remand even though that failure did not appear to prejudice the defendant in that case).

#### CONCLUSION

Mr. Clapp respectfully requests this Court reverse the order denying his Rule 35(a) motion and remand this case to correct his illegal sentence.

DATED this 17<sup>th</sup> day of February, 2021.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17<sup>th</sup> day of February, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

KENNETH K. JORGENSEN  
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/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

BRD/eas