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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 48378-2020
 Plaintiff-Respondent,)
) Ada County Case No.
 v.) CR01-18-32652
)
 TYLER SHAWN CLAPP,)
)
 Defendant-Appellant.)
)
)

BRIEF OF RESPONDENT

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

**HONORABLE RONALD J. WILPER
District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Tyler Shawn Clapp appeals from the order of the district court denying his motion to correct an illegal sentence under Idaho Criminal Rule 35(a). On appeal, Clapp contends the district court erred by denying his Rule 35 motion.

Statement Of The Facts And Course Of The Proceedings

A jury found Clapp guilty of felony DUI and being a persistent violator of the law. (Supp. R., pp.384-94.¹) The district court ordered the preparation of a presentence investigation report (PSI) in advance of sentencing. (Supp. R., p.395.) The PSI recommended that the court impose a term of imprisonment. (Supp. Tr., p.488, Ls.7-10.²)

During sentencing, defense counsel argued for a period of retained jurisdiction to “ensure that the treatment [recommended by the psychological evaluation], as pointed out and needed and I believe mandated by Idaho Code 19-2523, would take place.” (Supp. Tr., p.476, L.19 – p.477, L.4.) In response, the district court asked defense counsel whether the court had to order treatment in order to comply with § 19-2523 if it imposed a prison sentence. (Supp. Tr., p.480, Ls.5-17.) Defense counsel responded, “No, Your Honor, I think you can order that.” (Supp. Tr., p.480, Ls.18-19.) He explained, “I just don’t think that a prison sentence would necessarily composite all of the things that are recommended for Mr. Clapp. I think that that would be better accomplished on a Rider.” (Supp. Tr., p.480, Ls.19-23.) Having read the recommendations of the clinical neuropsychologist, the district court acknowledged Clapp’s “long history of

¹ To avoid confusion, the state adopts the Appellant’s citation designations. (See Appellant’s brief, p.1 n.1.)

² The PSI itself does not appear in the appellate record.

depression, and severe anxiety” but noted that Clapp could seek the recommended treatment “when he gets out on parole.” (Supp. Tr., p.491, Ls.6-16.) Ultimately, the court imposed and executed a unified sentence of fifteen years, with five years fixed. (Supp. R., pp.667-69; Supp. Tr., p.490, L.18 – p.491, L.1.) The court did not, however, authorize treatment. (See Supp. R., pp.667-69.)

Clapp subsequently filed a motion to excuse counsel and proceed pro se, which the court granted. (R., pp.20-27.) Clapp then filed a pro se motion under I.C.R. 35(a) to correct an illegal sentence. (R., pp.28-34.) Relevant to this appeal, he argued in essence that the district court erred by failing to “authorize treatment as required under Idaho Code § 19-2523.” (R., pp.30-31, 34.) The district court denied the motion. (R., pp.37-40.) The court determined that it was not required to authorize treatment under § 19-2523 and therefore the sentence imposed was not illegal from the face of the record. (Id.)

Clapp timely appealed. (R., pp.42-44.)

ISSUE

Clapp states the issue on appeal as:

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

(Appellant's brief, p.3.)

The state rephrases the issue as:

Has Clapp failed to show that the district court erred when it denied his Rule 35 motion?

ARGUMENT

Clapp Has Failed To Show That The District Court Erred When It Denied His Rule 35(a) Motion

A. Introduction

In denying Clapp's Rule 35(a) motion, the district court concluded that the sentence imposed was not illegal from the face of the record because the court was not required to authorize treatment under I.C. § 19-2523(2). (R., pp.37-40.) "[M]indful that the district court's failure to authorize treatment under I.C. § 19-2523(2) does not necessarily make the overall sentence itself unlawful," Clapp nevertheless asserts on appeal that "the district court erred by denying the Rule 35(a) motion because the judgment of conviction does not specifically authorizing [sic] treatment as required by I.C. § 19-2523(2)." (Appellant's brief, p.4.) Clapp's argument lacks merit. Applicable law reveals that the district court properly denied Clapp's Rule 35(a) motion.

B. Standard Of Review

Idaho Criminal Rule 35(a) is a narrow rule that allows a trial court to correct an illegal sentence at any time. State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009). Whether a sentence is illegal is a question of law, over which the Court exercises free review. State v. Farwell, 144 Idaho 732, 735, 170 P.3d 397, 400 (2007).

C. The District Court Did Not Impose An Illegal Sentence

Idaho Criminal Rule 35(a) provides, "The court may correct a sentence that is illegal from the face of the record at any time." I.C.R. 35(a). "[T]he term 'illegal sentence' under Rule 35 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." Clements, 148 Idaho at 86, 218

P.3d at 1147. Rule 35(a) “is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal; rather, the rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law ...” Id. (citation omitted).

Here, the district court correctly determined that Clapp’s sentence is “not illegal from the face of the record.” (R., p.40.) Idaho Code § 19-2523(2) provides:

(2) The court shall authorize treatment during the period of confinement or probation specified in the sentence *if*, after the sentencing hearing, it concludes by clear and convincing evidence that:

(a) The defendant suffers from a severe and reliably diagnosable mental illness or defect resulting in the defendant’s inability to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law;

(b) Without treatment, the immediate prognosis is for major distress resulting in serious mental or physical deterioration of the defendant;

(c) Treatment is available for such illness or defect;

(d) The relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment. (of the offense charged.)

I.C. § 19-2523(2) (emphasis added). Thus, the district court was only required to authorize treatment *if*, after the sentencing hearing, it concluded by clear and convincing evidence that the criteria enumerated in subsections (a)-(d) were present in Clapp’s case. See State v. Leach, 135 Idaho 525, 532, 20 P.3d 709, 716 (Ct. App. 2001) (holding district court must authorize treatment on remand because all the criteria specified in § 19-2523(2) were present).

In imposing Clapp’s sentence, the district court considered the applicability of I.C. § 19-2523(2). (Supp. Tr., p.476, L.19 – p.477, L.4; p.480, Ls.5-23.) The district court was cognizant of Clapp’s mental health and substance abuse issues. (Supp. Tr., p.491, Ls.6-16.) The court was also aware of the fact that Clapp could benefit from certain treatments. (Id.) Nevertheless, the

court did not conclude by clear and convincing evidence that any of the requisite criteria set forth in § 19-2523(2)(a)-(d) were present in Clapp's case. (See Supp. Tr., p.488, L.2 – p.491, L.20; R., pp.39-40.) Because the district court did not conclude, after the sentencing hearing, that any of the requisite criteria set forth in subsections (a)-(d) were present in Clapp's case, it was under no obligation to authorize treatment during the period of confinement pursuant to § 19-2523(2). Accordingly, the sentence imposed is not illegal on the face of the record, and the district court properly denied Clapp's Rule 35(a) motion on that basis.

Clapp argues that the district court's failure to authorize treatment pursuant to I.C. § 19-2523(2) was error clear from the face of the record. (Appellant's brief, p.4.) His argument fails for two reasons.

First, Clapp's argument has no basis in law. According to Clapp, the district court was required to authorize treatment because, at the sentencing hearing, the court acknowledged that he suffered from treatable mental health issues. (Appellant's brief, pp.4-5.) This argument disregards the correct legal standard. Proper application of I.C. § 19-2523(2) reveals that the district court is required to authorize treatment during the period of confinement only if, after the sentencing hearing, it concludes by clear and convincing evidence that the criteria set forth in subsections (a)-(d) are present. See I.C. § 19-2523(2); Leach, 135 Idaho at 532, 20 P.3d at 716. In other words, merely acknowledging treatable mental health issues during sentencing is insufficient to trigger § 19-2523(2)'s treatment authorization requirement. In this case, the district court applied the correct legal standards and determined that the sentence imposed was not illegal because the relevant criteria are not present in this case. (R., p.40 (stating that it "did not conclude by clear and convincing evidence, after the sentencing hearing, that treatment for mental illness was necessary."))

Clapp cites Leach in support of his argument. (Appellant’s brief, p.5.) However, Leach does not support Clapp’s argument as it is both factually and legally distinguishable from the instant case. In Leach, the defendant was convicted of aggravated battery after cutting a child’s throat with a knife during a psychotic episode. Leach, 135 Idaho at 528, 20 P.3d at 712. The evidence presented during the sentencing hearing showed that Leach suffered from schizoaffective disorder with psychotic hallucinations, but that her illness was well controlled by medication and therapy. Id. While on probation, Leach’s treating psychiatrist directed Leach to be hospitalized because of a deterioration of her mental stability. Id. During a subsequent hearing to resolve several alleged probation violations, Leach’s psychiatrist testified that Leach was experiencing an increase in the number of auditory hallucinations urging her to commit acts of violence. Id. The court found that Leach violated the conditions of her probation, revoked her probation, and ordered execution of her original sentence. Id. at 529, 20 P.3d at 713. On appeal, Leach argued that her sentence violated I.C. § 19-2523(2) because the court failed to authorize treatment when it revoked her probation and executed the underlying sentence. Id. The Idaho Court of Appeals agreed because it was “apparent that all participants in the proceedings below recognized that the criteria specified in § 19-2523(2) [were] present in Leach’s case.” Id. at 531-32, 20 P.3d at 715-16.

Unlike Leach, the criteria specified in § 19-2523(2)(a)-(d) were not present in this case. Clapp has never contended, much less shown, that his mental illness resulted in an inability to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law. (See Appellant’s brief, pp.4-5; R., pp.28-34.) Likewise, he has not argued or shown that without treatment, his immediate prognosis is for major distress that would result in serious mental or physical deterioration. (Id.) As to whether the recommended treatments are even available in

prison, Clapp admits that some, such as the sleep study, are not. (Appellant’s brief, p.2; R., p.31.) Finally, he has never argued that the relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment. (See Appellant’s brief, pp.4-5; R., pp.28-34.) Because the criteria specified in § 19-2523(2) were not present in this case, the district court was not required to authorize treatment during the period of confinement, unlike the district court in Leach.

Second, Clapp’s argument that the district court erred when it failed to authorize treatment pursuant to I.C. § 19-2523(2) is not actually an argument that his unified sentence of fifteen years, with five years fixed, is a sentence that is “simply not authorized by law.” Even it were, Clapp conceded during the sentencing hearing, that the court would not be “out of compliance” with § 19-2523 if it imposed a prison sentence without authorizing treatment. (Supp. Tr., p.476, L.19 – p.477, L.4; p.480, Ls.5-23.) Likewise, he concedes on appeal that “the district court’s failure to authorize treatment under I.C. § 19-2523(2) does not necessarily render the overall sentence itself unlawful.” (Appellant’s brief, p.4).

In sum, Clapp has failed to show that his sentence is illegal on the face of the record because the district court did not authorize treatment pursuant to I.C. § 19-2523(2). Accordingly, he has failed to show that the district court erred when it denied his Rule 35(a) motion.

CONCLUSION

The state respectfully requests this Court affirm the order of the district court denying the Rule 35(a) motion.

DATED this 11th day of May, 2021.

/s/ Justin R. Porter
JUSTIN R. PORTER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of May, 2021, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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/s/ Justin R. Porter
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JRP/dd