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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 48832-2021
)	
v.)	TWIN FALLS COUNTY
)	NO. CR42-19-6386
ALEXIS AVALOS,)	
)	APPELLANT’S BRIEF
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After the district court relinquished jurisdiction without a hearing, Mr. Avalos filed an Idaho Criminal Rule 35(a) (“Rule 35(a)”) motion alleging a due process violation. Mindful of *State v. Coassolo*, 136 Idaho 138 (2001), Mr. Avalos argues the district court erred by denying his Rule 35(a) motion.

Statement of Facts and Course of Proceedings

In August 2019, the State charged Mr. Avalos with robbery. (R., pp.16–17, 19–20.) Pursuant to a plea agreement, Mr. Avalos pled guilty as charged. (R., pp.22, 33.) In October 2019, the district court sentenced him to eight years, with four years fixed, and retained jurisdiction (a “rider”). (R., pp.36, 45–50; *see also* R., pp.55–60 (corrected judgment).)

About seven months later, in May 2020, the district court received the addendum to the presentence investigation report (APSI) that recommended relinquishment. (PSI,¹ p.119.) A few days later, the district court entered an order relinquishing jurisdiction. (R., p.53.) The district court did not hold a hearing. (*See* R., pp.5–6.)

In February 2021, Mr. Avalos filed a pro se motion under Idaho Criminal Rule 35(a). (R., pp.75–83.) He argued his sentence was illegal because the district court did not allow him to respond and object to the APSI before relinquishment. (R., pp.77–82.) The district court denied Mr. Avalos’ pro se request for a hearing, but appointed counsel to represent him in the matter. (R., pp.86, 88.) Mr. Avalos, through counsel, filed a motion to correct an illegal sentence on a similar basis. (R., pp.89–90.)

In May 2021, the district court held a hearing on the Rule 35(a) motion. (R., p.106.) At the end of the hearing, the district court orally denied the motion. (R., p.106; Tr., p.10, L.19–p.13, L.17.) Mr. Avalos appealed. (R., pp.107–09.) Shortly thereafter, the district court issued a written order denying the motion for the reasons stated on the record. (R., p.111.)

ISSUE

Did the district court err when it denied Mr. Avalos’ Rule 35 motion to correct an illegal sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Avalos’ Rule 35 Motion To Correct An Illegal Sentence

Rule 35(a) states: “The court may correct a sentence that is illegal from the face of the record at any time.” I.C.R. 35(a). “Rule 35 is a ‘narrow rule.’” *State v. Clements*, 148 Idaho 82, 86 (2009) (quoting *State v. Farwell*, 144 Idaho 732, 735 (2007)). “Rule 35 is not a vehicle

¹ Citations to the PSI refer to the 135-page electronic document with the confidential exhibits, including the APSI.

designed to reexamine the facts underlying the case to determine whether a sentence is illegal.”

Id. “[T]he rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law” *Id.* Pursuant to Rule 35(a),

the term ‘illegal sentence’ . . . 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. The rule is limited to legal questions surrounding the defendant’s sentence, and any factual issues must be apparent from the face of the record.

State v. Meier, 159 Idaho 712, 713 (Ct. App. 2016) (citations omitted). In other words, “Rule 35’s purpose is to allow courts to correct illegal sentences, not to reexamine errors occurring at trial or before the imposition of the sentence.” *State v. Wolfe*, 158 Idaho 55, 65 (2015). The appellate court exercises free review over a claim of an illegal sentence or a sentence imposed in an illegal manner. *Clements*, 148 Idaho at 84.

In *Coassolo*, the Court held that defendants do “not have a constitutionally protected liberty interest” to require a hearing before relinquishment of jurisdiction. *Id.* at 143. *Coassolo* also held that defendants do not have a constitutionally protected liberty interest in the procedures followed by the Idaho Department of Correction (IDOC). *Id.* Moreover, *Coassolo* held that “the interest of the state and the prisoner in the fairness and accuracy of the report is not a constitutionally protected liberty interest.” *Id.* Thus, the IDOC’s procedures in submitting a report and the district court’s procedures in relinquishing jurisdiction without a hearing do not violate a defendant’s due process rights. *Id.* Further, the *Coassolo* Court noted, “[T]he constitutional protections required at sentencing are not applicable to the retained jurisdiction program because sentencing occurs before the period of retained jurisdiction, not when jurisdiction is relinquished.” *Id.* at 142–43. In short, a hearing before relinquishment is “not constitutionally necessary.” *Id.* at 144

Mindful of *Coassolo*, Mr. Avalos argues that the district court erred by denying his Rule 35(a) motion. As argued in his motion, he was not given an opportunity to object to the APSI's recommendation for relinquishment. (R., p.89.) The district court's decision to relinquish jurisdiction without a hearing was a violation of his due process rights. (R., p.89.) Further, he asserts, as argued in his pro se motion, the district court's sentencing process is not complete until it receives the APSI and therefore he had a due process right to respond to the APSI before relinquishment. (R., pp.77–82; Tr., p.4, L.15–p.5, L.8.) Due to these due process violations, but mindful of *Coassolo*, Mr. Avalos maintains that his sentence is illegal.

CONCLUSION

Mr. Avalos respectfully requests that this Court reverse or vacate the district court's order denying his Rule 35(a) motion and remand this case for further proceedings.

DATED this 24th day of August, 2021.

/s/ Jenny C. Swinford
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August, 2021, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF to be served as follows:

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DEPUTY ATTORNEY GENERAL
E-Service: ecf@ag.idaho.gov

/s/ Teal M. Vosburgh
Teal M. Vosburgh
Administrative Assistant

JCS/tmv