

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42051

STATE OF IDAHO,) 2015 Unpublished Opinion No. 394
)
Plaintiff-Respondent,) Filed: March 6, 2015
)
v.) Stephen W. Kenyon, Clerk
)
BRANDON GRANT GOULD,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Jason D. Scott, District Judge.

Order denying motion for correction of illegal sentence, affirmed.

Sara B. Thomas, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Nicole L. Schafer, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

Brandon Grant Gould was convicted of lewd conduct with a minor. In this appeal, he argues that the charging indictment was deficient because it did not list the names of the witnesses who testified before the grand jury, as required by statute. He asserts that this error was jurisdictional, and therefore his conviction should be vacated.

I.

BACKGROUND

Gould was convicted of lewd conduct with a minor under sixteen, and his conviction was affirmed on appeal. *Gould v. State*, Docket No. 35797 (Ct. App. Oct. 27, 2009) (unpublished).

Gould subsequently filed a motion for correction of an illegal sentence pursuant to Idaho Criminal Rule 35. In that motion, he argued that because of deficiencies in the charging

document, an amended indictment, the district court lacked subject matter jurisdiction in the criminal case. He contended, among other things, that because the indictment did not contain “the names of the witnesses examined before the grand jury” as required by a statute and criminal rule, the district court never acquired subject matter jurisdiction.

The district court agreed that the indictment failed to comply with the relevant statute and rule, but held that this deficiency did not invalidate the judgment. Gould appeals.

II. ANALYSIS

Both Idaho Code § 19-1404¹ and I.C.R. 6.6² require that an indictment include the names of the witnesses who testified before the grand jury. The amended indictment in which Gould was charged does not contain a list of names. Accordingly, the indictment was deficient. But that determination is insufficient to warrant the relief sought by Gould. Generally, complaints regarding defects in an indictment must be raised prior to trial, I.C.R. 12(b)(2), and collateral attacks on a conviction generally may not be made through an I.C.R. 35 motion. *See Hill v. United States*, 368 U.S. 424, 430 (1962); *Housley v. State*, 119 Idaho 885, 889, 811 P.2d 495, 499 (Ct. App. 1991). An exception exists, however, where defects that appear on the face of the record show that the court lacked subject matter jurisdiction. *State v. Wolfe*, ___ Idaho ___, ___ P.3d ___ (Feb. 17, 2015). Therefore, we must determine whether the defect in Gould’s indictment is jurisdictional. Jurisdiction is a question of law and is reviewed de novo. *State v. Lute*, 150 Idaho 837, 839, 252 P.3d 1255, 1257 (2011); *State v. Barros*, 131 Idaho 379, 381, 957 P.2d 1095, 1097 (1998).

In certain cases, a deficient charging document fails to confer subject matter jurisdiction upon a court and thereby renders any resulting judgment void. Criminal charging documents serve to provide the jurisdictional grounding for the court to hear the case. *State v. Olin*, 153 Idaho 891, 893, 292 P.3d 282, 284 (Ct. App. 2012). An information, indictment, or complaint alleging an offense committed within the state of Idaho confers subject matter jurisdiction upon

¹ Idaho Code § 19-1404 states, “When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or endorsed thereon, before it is presented to the court.”

² Idaho Criminal Rule 6.6 states, “The indictment shall be in writing and have endorsed thereupon the names of all witnesses examined before the grand jury with regard to the subject matter of the indictment.”

the court. *State v. Rogers*, 140 Idaho 223, 228, 91 P.3d 1127, 1132 (2004). It follows that a charging document may be so defective that it fails to confer jurisdiction. *See id.* (describing certain deficiencies in a charging document as “jurisdictional defects”). In *State v. Dalling*, 128 Idaho 203, 204-05, 911 P.2d 1115, 1116-17 (1996), the Idaho Supreme Court held that a grand jury whose term had expired lacked the authority to indict and that a purported indictment by an expired grand jury was void. Of course, if a charging document is void, it could not confer subject matter jurisdiction over the case, and a resulting judgment would be void. Not every defect in a charging document is jurisdictional, however. In *State v. Jones*, 140 Idaho 755, 759, 101 P.3d 699, 703 (2004), for example, the Court held that a charging document that failed to allege a required element of the offense, but did reference the appropriate code section defining the offense, was not jurisdictionally defective. *See also Olin*, 153 Idaho at 893-94, 292 P.3d at 284-85 (describing the classes of defects that are jurisdictional).

We hold that the defect in Gould’s indictment was not jurisdictional. It is not comparable to the types of defects that have been deemed jurisdictional. Defects in charging documents have been found to be jurisdictional in very limited circumstances. For example, in *Olin*, we outlined four types of jurisdictional defects:

(1) the alleged facts are not made criminal by statute; (2) there is a failure to state facts essential to establish the offense charged; (3) the alleged facts show on their face that the court has no jurisdiction of the charged offense; or (4) the allegations fail to show that the offense charged was committed within the territorial jurisdiction of the court.

Id. at 893, 292 P.3d at 284.³ These four categories all share a common thread: the facts as alleged in the charging document do not amount to a crime that may be tried in Idaho courts. The jurisdictional defect recognized by *Dalling* is similarly fundamental. There, because the term of the grand jury had expired, “[T]he grand jurors were acting without authority in the status of an office that no longer existed.” *Dalling*, 128 Idaho at 206, 911 P.2d at 1118.

³ We noted that “the Idaho Supreme Court has modified the jurisdictional analysis by differentiating between due process issues and those involving jurisdiction.” *State v. Olin*, 153 Idaho 891, 893, 292 P.3d 282, 284 (Ct. App. 2012). We then referenced *State v. Jones*, 140 Idaho 755, 101 P.3d 699 (2004) and *State v. Quintero*, 141 Idaho 619, 115 P.3d 710 (2005). In both cases, the factual allegations in the charging documents omitted an element of the charged offense, but referenced the appropriate code section. The Idaho Supreme Court held that these charging documents were not jurisdictionally defective.

Gould does not argue that his conduct did not amount to an offense, nor that the grand jury lacked the authority to issue indictments, nor any other defect of a fundamental or structural nature. There was merely an absence of the names of the testifying witnesses. None of the reported decisions interpreting either I.C. § 19-1404 or I.C.R. 6.6 hold that this or a similar defect is jurisdictional. Accordingly, we conclude that Gould's claim is untimely and procedurally improper.

Although we do not rely upon this point for our decision, we note that the defect of which Gould complains could not have prejudiced him. The only effect was that the indictment did not notify him of the identity of witnesses who testified before the grand jury. In rejecting Gould's jurisdictional argument in this matter, the district court noted that Gould had "ordered and obtained a transcript of the grand jury proceedings several months before trial," and Gould does not dispute that point on appeal. Acquisition of the transcript would have made Gould fully aware of the identities of the witnesses, obviating any possible prejudice from the alleged deficiency in the indictment.

III. CONCLUSION

Gould's claim of error is entirely premised upon the contention that the defect was jurisdictional. We hold that it was not. Therefore, the order of the district court denying Gould's Rule 35 motion is affirmed.

Judge GUTIERREZ and Judge GRATTON **CONCUR.**