

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46677

STATE OF IDAHO,)
)
) **Filed: August 15, 2019**
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) **Karel A. Lehrman, Clerk**
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) **THIS IS AN UNPUBLISHED**
) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Samuel Hoagland, District Judge.

Order denying Idaho Criminal Rule 35 motion to correct an illegal sentence, affirmed.

Detrick C. Conerly, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before HUSKEY Judge; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

Detrick Curtis Conerly pled guilty to two counts of misappropriation of personal identifying information. At a motion to withdraw guilty plea hearing, Conerly orally motioned the district court to dismiss for lack of subject matter jurisdiction. The district court indicated, “I’m not going to hear it. I told you two months ago when we set this up, that we would hear the motion to withdraw. I’ve heard the motion to withdraw. . . . Somebody wants to file a motion later with briefs or whatnot, I suppose they’re free to do so.” The district court then denied Conerly’s motion to withdraw his guilty plea. At the sentencing hearing, Conerly again expressed concern about the district court’s jurisdiction. Conerly filed a notice of appeal from his judgment of conviction. At the restitution hearing, Conerly again raised an oral motion to

dismiss for lack of subject matter jurisdiction. The district court denied the motion to dismiss, noting that Conerly already filed his appeal and Idaho Appellate Rule 13 precluded the court from resolving a jurisdictional challenge while the appeal was pending. On appeal, Conerly argued the district court violated Conerly's procedural due process rights when the court refused to hear Conerly's motion for lack of subject matter jurisdiction. This Court affirmed Conerly's judgment of conviction in an unpublished opinion. *State v. Conerly*, Docket No. 43958 (Ct. App. Jan. 26, 2017).

Conerly filed an Idaho Criminal Rule 35 motion to correct an illegal sentence and asserted the district court lacked subject matter jurisdiction when it imposed sentence because Conerly is a sovereign, not a person. Conerly timely appealed.

Whether a court lacks jurisdiction is a question of law over which this Court exercises free review. *State v. Jones*, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004). A challenge to a court's subject matter jurisdiction may be raised at any time during the course of the proceedings, even for the first time on appeal, and may not be waived by the parties. *State v. Armstrong*, 146 Idaho 372, 374, 195 P.3d 731, 733 (Ct. App. 2008); *State v. McCarthy*, 133 Idaho 119, 122, 982 P.2d 954, 957 (Ct. App. 1999). This includes a party raising a subject matter jurisdictional challenge in an I.C.R. 35 motion. See *State v. Lute*, 150 Idaho 837, 840, 252 P.3d 1255, 1258 (2011). To properly proceed in a criminal case, a court must acquire both personal and subject matter jurisdiction. *State v. Rogers*, 140 Idaho 223, 228, 91 P.3d 1127, 1132 (2004). Personal jurisdiction refers to a court's power to bring a person into its adjudicative process, whereas subject matter jurisdiction refers to jurisdiction over the nature of the case and the type of relief sought. *State v. Ambro*, 142 Idaho 77, 79, 123 P.3d 710, 712 (Ct. App. 2005). Thus, without personal jurisdiction, the court has no person to hold accountable; without subject matter jurisdiction, the court has no alleged crime to hold the person accountable for. *Rogers*, 140 Idaho at 228, 91 P.3d at 1132.

The information, indictment, or complaint alleging an offense was committed within the State of Idaho confers subject matter jurisdiction upon the court. *State v. Slater*, 71 Idaho 335, 338, 231 P.2d 424, 425 (1951). Accord, *State v. Pyne*, 105 Idaho 427, 428, 670 P.2d 528, 529 (1983); *State v. Mowrey*, 91 Idaho 693, 695, 429 P.2d 425, 427 (1967). Subject matter jurisdiction to try a defendant and impose a sentence is never waived. *Slater*, 71 Idaho at 338, 231 P.2d at 425.

Here, the district court acquired subject matter jurisdiction over Conerly on July 2, 2015, when the State filed the criminal complaint. Conerly does not provide argument and authority that the complaint was improperly filed, that the complaint did not allege a criminal offense, or that the offense did not occur in Idaho. Consequently, Conerly has not persuaded this Court that the district court did not have subject matter jurisdiction over the case. Instead, he argues the court did not have jurisdiction over his person, because he does not self-identify as a person, but as a sovereign.

In a criminal case, the court properly acquires personal jurisdiction over the defendant when the defendant appears at the initial court setting on a complaint or arraignment on the indictment. I.C.R. 4, 10. *See Rogers*, 140 Idaho at 228, 91 P.3d at 1132. Here, whether self-identifying as a person or a sovereign, Conerly appeared at the initial court setting, thus the district court had both personal jurisdiction over Conerly and subject matter jurisdiction over the case. Additionally, this Court has “consistently and unequivocally rejected the notion that a state must contract with a citizen either to obtain personal jurisdiction or to subject the citizen to its laws.” *State v. Simmons*, 115 Idaho 877, 878, 771 P.2d 541, 542 (Ct. App. 1989).

The record supports the district court’s finding that Conerly’s sentence was not illegal. The district court had personal and subject matter jurisdiction over Conerly. Therefore, the district court properly denied Conerly’s motion. Accordingly, we conclude no abuse of discretion has been shown and the district court’s order denying Conerly’s I.C.R. 35 motion is affirmed.