

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46881

STATE OF IDAHO,)
) Filed: October 31, 2019
Plaintiff-Respondent,)
) Karel A. Lehrman, Clerk
v.)
) THIS IS AN UNPUBLISHED
JUAN CARLOS ALDANA) OPINION AND SHALL NOT
VILLANUEVA,) BE CITED AS AUTHORITY
)
Defendant-Appellant.)
)

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Richard S. Christensen, District Judge.

Order denying I.C.R. 35(a) motion to correct an illegal sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Reed P. Anderson, Deputy Appellate Public Defender, Boise, for appellant.

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

Before GRATTON, Chief Judge; LORELLO, Judge;
and BRAILSFORD, Judge

PER CURIAM

Juan Carlos Aldana Villanueva pled guilty to second degree murder, Idaho Code §§ 18-4001, 18-4003, 18-4004. The district court imposed a unified term of twenty-eight years with twenty years determinate.

Villanueva filed an Idaho Criminal Rule 35 motion for correction of an illegal sentence, asserting that his sentence is illegal because his trial counsel failed to tell him that he did not have to speak with the presentence investigator. He also asserted that this right to due process was violated because mitigating evidence was not presented to the district court prior to

sentencing. The district court denied Villanueva's motion, finding that Villanueva's sentence is not illegal. Villanueva appeals.

In *State v. Clements*, 148 Idaho 82, 86, 218 P.3d 1143, 1147 (2009), the Idaho Supreme Court held that the 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. Rule 35 is a "narrow rule," and because an illegal sentence may be corrected at any time, the authority conferred by Rule 35 should be limited to uphold the finality of judgments. *State v. Farwell*, 144 Idaho 732, 735, 170 P.3d 397, 400 (2007). Rule 35 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 or where new evidence tends to show that the original sentence is excessive. *Clements*, 148 Idaho at 86, 218 P.3d at 1147.

The record supports the district court's finding that Villanueva's sentence is not illegal. Therefore, the district court properly denied Villanueva's motion. Accordingly, we conclude no abuse of discretion has been shown and the district court's order denying Villanueva's Rule 35 motion is affirmed.