

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47126

STATE OF IDAHO,)
) **Filed: January 23, 2020**
) **Plaintiff-Respondent,**)
) **Karel A. Lehrman, Clerk**
v.)
) **THIS IS AN UNPUBLISHED**
AUSTIN BLAKE THRASHER,) **OPINION AND SHALL NOT**
) **BE CITED AS AUTHORITY**
) **Defendant-Appellant.**)
)

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. Barbara A. Buchanan, District Judge.

Order denying Idaho Criminal Rule 35 motion, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Ben P. McGreevy, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

Austin Blake Thrasher pleaded guilty to first degree murder, Idaho Code § 18-4001. The district court imposed a unified life sentence, with twenty-five years determinate. Thrasher appealed the length of the fixed term of his sentence, and this Court affirmed his judgment of conviction and sentence. *State v. Thrasher*, Docket No. 40954 (Ct. App. May 28, 2014) (unpublished).

Thrasher filed an Idaho Criminal Rule 35 motion for correction of an illegal sentence asserting that his sentence was illegal because he was not told that he did not have to speak with the presentence investigator, his counsel allowed violations that rose to the level of “Fundamental Defect,” and a neuropsychological evaluation should have been performed.

Thrasher asserts that the state and constitutional issues he claimed in his I.C.R. 35(a) motion “raised significant questions to the said penalty an[d] to the depth of sentence inflicted upon” Thrasher and that he should be granted a new presentence investigation report, a new sentencing hearing, newly appointed conflict counsel, and an evidentiary hearing prior to sentencing. The district court denied Thrasher’s motion, finding that the motion was untimely under I.C.R. 35(b) and that Thrasher’s sentence was not illegal under I.C.R. 35(a) because pursuant to *State v. Wolfe*, 158 Idaho 55, 65, 343 P.3d 497, 507 (2015), because it involved “significant questions of fact that would require an evidentiary hearing.” Thrasher appeals.

In *State v. Clements*, 148 Idaho 82, 87, 218 P.3d 1143, 1148 (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). Idaho Criminal 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 was excessive. *Clements*, 148 Idaho at 87, 218 P.3d at 1148.

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