

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

STATE OF IDAHO,)	Docket Nos. 47221/47222/47223
)	
Plaintiff-Respondent,)	
)	
v.)	
)	
JAMES EARL NEWMAN,)	
)	
Defendant-Appellant.)	
)	
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JAMES EARL NEWMAN,)	Docket No. 47224
)	
Petitioner-Appellant,)	
)	
v.)	Filed: March 19, 2020
)	
)	Karel A. Lehrman, Clerk
STATE OF IDAHO,)	
)	
Respondent.)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gene A. Petty, District Judge.

Appeals in Docket Nos. 47221 and 47224, dismissed; orders denying Idaho Criminal Rule 35 motions for correction of illegal sentences in Docket Nos. 47222 and 47223, affirmed.

Ferguson Durham, PLLC; Craig H. Durham, Boise, for appellant.

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

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

PER CURIAM

James Earl Newman appeals the district court’s denial of his motions under Idaho Criminal Rule 35(a) to correct an illegal sentence. In March and April 2019, Newman filed

Rule 35(a) motions in four different cases. In July 2019, the district court entered a single order denying Newman's filings regarding his Rule 35(a) motions in each of Newman's four cases. Newman then filed an appeal of this order in each of his four cases and moved to consolidate those four appeals. That motion to consolidate was granted, and as a result, this consolidated appeal involves: (1) Docket No. 47221 (CR-2002-2050) in which the State charged Newman with burglary and grand theft;¹ (2) Docket No. 47222 (CR-2002-22668) in which the State charged Newman with grand theft by possession of stolen property;² (3) Docket No. 47223 (CR-2003-13294) in which the State charged Newman with burglary, robbery, battery with intent to commit a serious felony, first degree kidnapping, and two counts of grand theft;³ and (4) Docket No. 47224 (CV-2005-08053) in which Newman filed a petition for post-conviction relief under the Idaho Uniform Post Conviction Procedure Act, I.C. §§ 19-4901 thru 19-4911.

As an initial matter, we dismiss Newman's appeal in Docket No. 47224. Previously, the district court entered a judgment summarily dismissing Newman's post-conviction case. Newman appealed that dismissal, and this Court affirmed the dismissal in October 2012. *See Newman v. State*, Docket No. 38281 (Ct. App. Oct. 1, 2012) (unpublished). As a result, Newman's post-conviction case was no longer pending when he filed his Rule 35(a) motion in that case in April 2019. Moreover, relief from an illegal sentence under Rule 35(a) is not an available post-conviction remedy for a petitioner. Accordingly, Newman's appeal in Docket No. 47224 is dismissed.

Likewise, Newman's appeal in Docket No. 47221 is also dismissed. In March 2004, the district court dismissed the charges related to Docket No. 47221 pursuant to a plea agreement between Newman and the State in which Newman pled guilty to the charge of grand theft by possession of stolen property in Docket No. 47222. Following this plea agreement, the district court imposed a unified sentence of ten years with three years determinate in the case underlying Docket No. 47222. Because the district court dismissed the case in Docket No. 47221, that case

¹ Idaho Code §§ 18-1401, 18-2403(1), 18-2407(1)(b).

² Idaho Code §§ 18-2403(4), 18-2407(1)(b).

³ Idaho Code §§ 18-1401, 18-6501, 18-6502, 18-6503, 28-903(b), 28-911, 18-4501, 18-4503, 18-2403(1), 18-2407(1)(b).

was not pending in March 2019 when Newman filed his Rule 35(a) motion, and the court imposed no sentence in that case for Newman to challenge as illegal under Rule 35(a).

In Docket No. 47223, Newman was found guilty of all charges following a jury trial. The district court imposed unified sentences of ten years with five years determinate for burglary; life with twenty-five years determinate for robbery; fifteen years with ten years determinate for battery with intent to commit a serious felony; life with twenty-five years determinate for first degree kidnapping; and seven years with three years determinate on each count of grand theft. The burglary, robbery, and grand theft sentences were ordered to run concurrently, and the battery and kidnapping sentences were ordered to run concurrently with each other and consecutive to the burglary, robbery, and grand theft sentences. Newman appealed these sentences, arguing they were excessive. This Court affirmed the sentences in an unpublished decision. *State v. Newman*, Docket No. 30796 (Ct. App. June 17, 2005). The Idaho Supreme Court initially granted review but then subsequently ordered that this Court's opinion was final. *State v. Newman*, Docket No. 32275 (Jan. 6, 2006).

Because Newman's Rule 35(a) motions were not proper in either his post-conviction case, Docket No. 47224, or the case the district court dismissed, Docket No. 47221, the only appeals we address involve those cases in which the district court actually imposed sentences that can be arguably challenged as illegal under Rule 35(a)--Docket Nos. 47222 and 47223. In support of his Rule 35(a) motions, Newman argues these sentences were illegal "because his trial counsel never advised him that he had a privilege not to incriminate himself during the presentence investigation process." The district court rejected this argument, concluding that it does not fall within the narrow definition of an illegal sentence under Rule 35(a) but rather would require the court to make factual determinations to resolve the merits of Newman's claim.

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 conclusion that Newman's sentences in Docket Nos. 47222 and 47223 are not illegal under Rule 35(a). Therefore, the district court properly denied Newman's Rule 35(a) motions in these cases, and this Court affirms the orders denying those motions. Further, this Court dismisses Newman's appeals in Docket No. 47221 and 47224 for the reasons set forth above.