

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 47873

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| STATE OF IDAHO, |) |
| |) Filed: August 27, 2020 |
| Plaintiff-Respondent, |) |
| |) Melanie Gagnepain, Clerk |
| v. |) |
| |) THIS IS AN UNPUBLISHED |
| ROBERT TERRY JOHNSON, JR., |) OPINION AND SHALL NOT |
| |) BE CITED AS AUTHORITY |
| Defendant-Appellant. |) |
| _____ |) |

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Gooding County. Hon. Rosemary Emory, District Judge.

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

Eric D. Fredericksen, State Appellate Public Defender; Sally J. Cooley, 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

In 1994, Robert Terry Johnson, Jr. was sentenced to two determinate life sentences following his convictions for two counts of first degree murder. In 2020, Johnson filed an Idaho Criminal Rule 35 motion to correct an illegal sentence, contending that his sentencing contained errors that rose to the level of a due process violation that deprived the district court of subject matter jurisdiction. The district court denied Johnson’s Rule 35 motion and held that the motion was based on factual claims outside the face of the record and that it lacked jurisdiction to address Johnson’s claims of illegalities in his sentencing. Johnson appeals, mindful of the decisions in *State v. Wolfe*, 158 Idaho 55, 65, 343 P.3d 497, 507 (2015) (holding that an illegal sentence is one that is illegal from the face of the record, does not involve significant questions

of fact, and does not require an evidentiary hearing), and *State v. Branigh*, 155 Idaho 404, 412, 313 P.3d 732, 740 (Ct. App. 2013) (holding mere judicial error does not divest a court of subject matter jurisdiction). Johnson also claims that the time to file his motion challenging errors in the sentencing proceedings should be tolled under the statute of limitations for filing a federal habeas corpus petition, 28 U.S.C.A. § 2244(d)(2). However, Johnson provides no authority for this proposition and we will, therefore, not consider it.

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 district court properly denied Johnson’s motion. Accordingly, we conclude no abuse of discretion has been shown and the district court’s order denying Johnson’s Rule 35 motion is affirmed.