

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48227

STATE OF IDAHO,)
) Filed: December 22, 2020
 Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
 v.)
) THIS IS AN UNPUBLISHED
 HAROLD EDWARD GRIST, JR.,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
 Defendant-Appellant.)
)

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Hon. Jeff M. Brudie, District Judge.

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

Harold Edward Grist, Jr., Boise, pro se appellant.

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

Before GRATTON, Judge; and BRAILSFORD, Judge

PER CURIAM¹

Harold Edward Grist, Jr., appeals from the district court’s order denying his motion to correct an illegal sentence under Idaho Criminal Rule 35(a). Grist’s sentencing appeal follows a somewhat protracted procedural history. In 2006, a jury found Grist guilty of ten counts of abusing his girlfriend’s daughter beginning when she was ten years old and continuing until she graduated from high school. *State v. Grist*, 152 Idaho 786, 788, 275 P.3d 12, 14 (Ct. App. 2012) (*Grist II*). These counts included seven counts of lewd conduct with a minor under sixteen, Idaho Code § 18-1508; one count of sexual abuse of a child under sixteen, I.C. § 18-1506(1)(b); and two counts of sexual battery of a minor child sixteen or seventeen years of age, I.C. § 18-

¹ Chief Judge Huskey and Judge Lorello did not participate.

1508A. *Grist II*, 152 Idaho at 788, 275 P.3d at 14. The district court imposed concurrent sentences of life with fifteen years determinate for the seven counts of lewd conduct and concurrent sentences of five years determinate for each of the three remaining counts. *Id.* The district court ordered the sentences for lewd conduct to run concurrently with the other sentences. Accordingly, Grist's combined sentences equaled life imprisonment with a minimum period of confinement of fifteen years. *Id.*

Grist appealed his conviction, and the Idaho Supreme Court ruled that the district court erred by admitting certain evidence of Grist's prior, uncharged sexual misconduct. *State v. Grist*, 147 Idaho 49, 54, 205 P.3d 1185, 1190 (2009) (*Grist I*). As a result, the Court vacated Grist's conviction and remanded the case. *Id.* at 55, 205 P.3d at 1191. On remand, a jury convicted Grist on all ten counts. *Grist II*, 152 Idaho at 788, 275 P.3d at 14. After this retrial, the district court imposed concurrent sentences of life with ten years determinate for the seven counts of lewd conduct and consecutive sentences of five years determinate for each of the three remaining counts. *Id.* The district court ordered the sentences for lewd conduct to run consecutively with the other sentences. As a result, Grist's combined sentences equaled life imprisonment with a minimum period of confinement of twenty-five years. *Id.*

Grist appealed again, arguing the district court violated his right to due process by imposing vindictive sentences. *Id.* at 789, 275 P.3d at 15. This Court held that the increase in Grist's aggregate determinate sentences from fifteen years to twenty-five years violated Grist's right to due process and directed the district court on remand to enter an amended judgment consistent with this Court's opinion. *Id.* at 795-96, 275 P.3d at 21-22.

On remand, the district court entered an amended judgment of conviction. In the amended judgment, the district court imposed concurrent sentences of life with ten years determinate for the seven counts of lewd conduct and consecutive sentences of five years determinate for each of the three remaining counts. In other words, Grist's combined sentences equaled life imprisonment with a minimum period of confinement of fifteen years.

After a series of other appellate proceedings, Grist filed a motion under I.C.R. 35(a) seeking to correct an illegal sentence in the amended judgment and generally expressing his confusion about the sentences imposed in the amended judgment. Addressing this motion, the district court found the amended judgment was in compliance with this Court's opinion in

Grist II, stated the amended judgment requires Grist to serve a minimum of fifteen years of confinement before becoming eligible for parole, and denied Grist's Rule 35 motion.

Grist again appeals. On appeal, he argues the amended judgment was "confusing"; he states the district court's denial of his Rule 35 motion clarified the amended judgment; and he asks this Court "to agree" the denial "change[s] the interpretation" of the amended judgment. Further, Grist asserts the district court "was disqualified for being vindictive and biased in my second trial" and "keeps coming back and making vindictive ruling[s] on my case."

Whether a sentence is illegal or imposed in an illegal manner is a question of law over which we exercise free review. *State v. Farwell*, 144 Idaho 732, 735, 170 P.3d 397, 400 (2007). 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. *State v. Clements*, 148 Idaho 82, 86, 218 P.3d 1143, 1147 (2009). 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. *Clements*, 148 Idaho at 86, 218 P.3d at 1147; *Farwell*, 144 Idaho at 735, 170 P.3d at 400. 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.

Based on a review of the record, we hold that the district court did not err by denying Grist's Rule 35 motion. Grist did not present any new evidence in support of his Rule 35 motion, and his sentences are not illegal. Rather, they are within the statutory limits. *See* I.C. § 18-1508 (providing statutory maximum of up to life imprisonment for lewd conduct); I.C. § 18-1506(5) (providing statutory maximum of up to twenty-five years for sexual abuse); I.C. § 18-1508A(5) (providing statutory maximum of up to twenty-five years for sexual battery of minor). Further, as the district court noted, the amended judgment is in compliance with this Court's decision in *Grist II* because it imposes a minimum, aggregate period of confinement of fifteen years consistent with the district court's original sentencing vacated by the Idaho Supreme Court's decision in *Grist I*.

We decline Grist's request "to agree" that the district court's denial of his Rule 35 motion "changed" the amended judgment in any regard. Although the denial apparently alleviated

Grist's confusion about the amended judgment's meaning, that denial did not in any way alter the amended judgment or the sentences it imposed. Further, we reject Grist's contention that the district court in this case was "disqualified" on retrial, "vindictive," or "biased." These allegations were not raised before the district court and, thus, are not preserved for appeal. *See State v. Fodge*, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992) (ruling issues not raised below generally may not be considered for first time on appeal). Moreover, the record does not support these allegations. Indeed, this Court specifically rejected the conclusion that "the district court was actually personally vindictive or motivated by malice" in *Grist II*, 152 Idaho at 795 n.1, 275 P.3d at 21 n.1.

We affirm the district court's order denying Grist's Rule 35 motion.