

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48400

STATE OF IDAHO,)
) Filed: August 11, 2021
Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
v.)
) THIS IS AN UNPUBLISHED
FABIAN SENA,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
Defendant-Appellant.)
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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Roger B. Harris, District Judge.

Order denying Idaho Criminal Rule 35(a) motion for correction of illegal sentence, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kale D. Gans, Deputy Attorney General, Boise, for respondent.

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

PER CURIAM

Fabian Sena pled guilty to grand theft, Idaho Code § 18-2403(1). The district court imposed a unified sentence of seven years with four years determinate and retained jurisdiction. The district court later entered an order relinquishing jurisdiction, and Sena filed a motion for reconsideration which the district court denied. Sena filed an Idaho Criminal Rule 35(a) motion for correction of an illegal sentence, asserting that his sentence is illegal because it violates his constitutional right to be free from cruel and unusual punishment. The district court denied Sena's motion, finding that Sena's sentence is not illegal. Sena appeals. Mindful of the applicable authorities and that the district court relinquished jurisdiction because Sena lied to

prison officials, Sena argues the district court erred by rejecting his claim that his sentence illegally violated his constitutional right to be free from cruel and unusual punishment.

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. *Clements*, 148 Idaho at 86, 218 P.3d at 1147; *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 Sena’s sentence is not illegal. Therefore, the district court properly denied Sena’s motion. Accordingly, we conclude no abuse of discretion has been shown and the district court’s order denying Sena’s Rule 35 motion is affirmed.