

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48442

STATE OF IDAHO, )  
 ) **Filed: July 15, 2022**  
 ) **Plaintiff-Respondent,** )  
 ) **Melanie Gagnepain, Clerk**  
v. )  
 ) **THIS IS AN UNPUBLISHED**  
 ) **MICHAEL THERON HAYES,** ) **OPINION AND SHALL NOT**  
 ) **BE CITED AS AUTHORITY**  
 ) **Defendant-Appellant.** )  
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Appeal from the District Court of the First Judicial District, State of Idaho, Shoshone County. Hon. Scott L. Wayman, District Judge.

Order denying Idaho Criminal Rule 35 motion to correct an illegal sentence, affirmed; order denying motion to correct prosecutorial misconduct, affirmed.

Michael Theron Hayes, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

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Before GRATTON, Judge; and BRAILSFORD, Judge  
and HORTON, Judge Pro Tem

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PER CURIAM

Michael Theron Hayes was found guilty of one count of lewd conduct; two counts of dispensing alcohol to a person under 21; and one count of distributing tobacco to a minor. The district court sentenced Hayes to a term of forty years with twenty years determinate for lewd conduct and concurrent terms of six months for the remaining convictions.

Years after concluding various post-trial, appellate, and post-conviction proceedings, Hayes filed an Idaho Criminal Rule 35(a) motion for correction of an illegal sentence. Hayes asserted a variety of claims, including that the district court erroneously joined this case from Shoshone County with a Kootenai County case for trial; he was incompetent to stand trial; errors and bias on the part of the trial judge; denial of opportunity to present mitigating evidence at

trial; prosecutorial misconduct; ineffective assistance of trial counsel; preliminary hearing errors; false testimony; due process and other constitutional and statutory violations; and, actual innocence and unsupported verdicts. Hayes also filed a motion to correct prosecutorial misconduct. The district court denied Hayes' Rule 35(a) motion, finding that Hayes' sentence is not illegal, and also denied the motion to correct prosecutorial misconduct. Hayes appeals.

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(a) 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(a) 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). Hayes' claims listed above do not directly challenge the legality of his sentence and all require factual determinations and, therefore, are not correctable under Rule 35(a).<sup>1</sup> The record supports the district court's finding that Hayes' sentence is not illegal. Therefore, the district court properly denied Hayes' Rule 35(a) motion.

The district court correctly denied Hayes' motion to correct prosecutorial misconduct as lacking a legal basis for the motion. Moreover, the district court lacked jurisdiction to consider the motion as Hayes' judgment of conviction had become final long ago. *State v. Jakoski*, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003) ("Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal.").

Accordingly, the district court's order denying Hayes' Rule 35(a) motion and order denying Hayes' motion to correct prosecutorial misconduct are affirmed.

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<sup>1</sup> We also note that Hayes' improper joinder claim under Rule 13 is incorrect based upon the plain language of the Rule.