

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 48485

STATE OF IDAHO,)
) Filed: February 14, 2022
 Plaintiff-Respondent,)
) Melanie Gagnepain, Clerk
 v.)
) THIS IS AN UNPUBLISHED
 ZACHARY TYLER ALLEN,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
 Defendant-Appellant.)
)
 _____)

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Joel E. Tingey, District Judge.

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

Eric D. Fredericksen, State Appellate Public Defender; Brian R. Dickson, Deputy Appellate Public Defender, Boise, for appellant.

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

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

PER CURIAM

Zachary Tyler Allen pled guilty to one count of forgery in Docket No. 47093. The district court imposed a unified term of five years with one and one-half years determinate, and retained jurisdiction. Allen filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Allen also filed a timely appeal from the judgment of conviction in Docket No. 47093 asserting his sentence was excessive. In an unpublished opinion, this Court affirmed the district court. *State v. Allen*, Docket No. 47093 (Ct. App. Feb. 13, 2020).

On January 2, 2020, at the request of Allen, the district court relinquished jurisdiction (Docket No. 47925). Allen filed an I.C.R. 35(c) motion alleging a miscalculation in the amount of credit for time served. The district court denied the motion and Allen filed an appeal with this

Court affirming the district court in an unpublished opinion. *State v. Allen*, Docket No. 47925 (Ct. Appl. Feb. 4, 2021).

During the pendency of the appeal in Docket No. 47925, Allen filed a second motion for credit for time served with an attached credit calculation (Docket No. 48485). The district court denied the second motion for credit for time served. Allen filed a motion for reconsideration which the district court denied. Later, Allen filed a second motion for reconsideration claiming, among other things, that his sentence was illegal. The district court reviewed his second motion for reconsideration and denied the motion. Allen filed a notice of appeal from the denial of his second motion.

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 Allen’s sentence is not illegal. Therefore, the district court properly denied Allen’s motion. Accordingly, we conclude no abuse of discretion has been shown and the district court’s order denying Allen’s Rule 35 motion is affirmed.