

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 49491

STATE OF IDAHO, )  
 ) Filed: November 17, 2022  
 Plaintiff-Respondent, )  
 ) Melanie Gagnepain, Clerk  
 v. )  
 ) THIS IS AN UNPUBLISHED  
 KENNETH EDWARD ELCOCK, ) OPINION AND SHALL NOT  
 ) BE CITED AS AUTHORITY  
 Defendant-Appellant. )  
 )  
 )

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Derrick J. O'Neill, District Judge.

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

Eric D. Fredericksen, State Appellate Public Defender; Jacob L. Westerfield, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Justin R. Porter, Deputy Attorney General, Boise, for respondent.

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

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PER CURIAM

Kenneth Edward Elcock pled guilty to one count of second degree murder, Idaho Code §§ 18-4001, 18-4002, 18-4003(g); three counts of aggravated battery, I.C. §§ 18-903(c), 18-907; and one count of aggravated assault, I.C. §§ 18-901(a), 18-905. The district court imposed a unified sentence of life with forty years determinate for second degree murder; concurrent, fifteen-year sentences on each count of aggravated battery; and a concurrent, five-year sentence for aggravated assault.

Elcock filed a pro se Idaho Criminal Rule 35(a) motion for correction of an illegal sentence. Elcock acknowledges “a motion to correct [an] illegal sentence under [Rule] 35(a) is limited to

sentences that are illegal from the face of the record.” Regardless, Elcock asserts that his sentence is illegal because: (1) a life sentence could only be imposed if aggravating factors were presented to a jury; (2) a life sentence was improper under *State v. Eubank*, 114 Idaho 635, 638, 759 P.2d 926, 929 (Ct. App. 1988); and (3) the mental health evaluation ordered prior to sentencing did not include an MRI examination. Counsel was appointed to represent Elcock on his motion. The district court denied Elcock’s motion, finding that his sentence is not illegal. Elcock 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 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.

Elcock fails to support his assertion that his sentence is illegal for the three reasons identified above with any cogent argument or relevant authority. As a result, Elcock has waived his arguments on appeal. *See State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) (ruling party waives issue on appeal if either authority or argument is lacking). Regardless, the record supports the district court’s conclusion that Elcock’s sentence is not illegal under Rule 35(a). Therefore, the district court properly denied Elcock’s motion. Accordingly, we conclude no abuse of discretion has been shown and the district court’s order denying Elcock’s Rule 35(a) motion is affirmed.