

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 38170

STATE OF IDAHO,)	2011 Unpublished Opinion No. 607
)	
Plaintiff-Respondent,)	Filed: September 7, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
THOMAS C. MILLER,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. Randy J. Stoker, District Judge.

Order denying I.C.R. 35 motion, affirmed.

Molly J. Huskey, State Appellate Public Defender; Jordan E. Taylor, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

Thomas C. Miller appeals from the denial of his Idaho Criminal Rule 35 motion to correct an illegal sentence. We affirm.

I.

FACTS AND PROCEDURE

In 2002, Miller pleaded guilty to lewd conduct with a minor under sixteen, Idaho Code § 18-1508. The district court imposed a unified term of imprisonment of twenty-five years, with fifteen years fixed. In 2005, pursuant to a stipulated order granting post-conviction relief, the district court resentenced Miller to a unified term of imprisonment of twenty years, with seven years fixed.

On September 16, 2010, Miller filed an Idaho Criminal Rule 35 motion to “correct an illegal sentence,” seeking commutation of his sentence. The district court denied the motion,

concluding that Miller's claim was not one to correct an illegal sentence and that the motion was otherwise untimely for any other relief under the rule. Miller appeals.

II. ANALYSIS

Idaho Criminal Rule 35 is a narrow rule that allows a trial court to correct an illegal sentence at any time, or to correct a sentence imposed in an illegal manner by motion made, as relevant to this case, within 120 days of the entry of the judgment of conviction. *State v. Farwell*, 144 Idaho 732, 735, 170 P.3d 397, 400 (2007). Here, Miller's motion is timely under the rule only if it is one to correct an illegal sentence. Whether a sentence is illegal is a question of law over which we exercise free review. *State v. Clements*, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009). A sentence is "illegal" within the meaning of Rule 35 only if it is in excess of statutory limits or otherwise contrary to applicable law. *State v. Peterson*, 148 Idaho 610, 613, 226 P.3d 552, 555 (Ct. App. 2010); *State v. Alsanea*, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003); *State v. Lee*, 116 Idaho 515, 516, 777 P.2d 737, 738 (Ct. App. 1989). *See also Clements*, 148 Idaho at 86, 218 P.3d at 1147 (An illegal sentence is one that "imposes a penalty that is simply not authorized by law.").

Miller's complaint has nothing to do with the legality of his sentence; indeed, the imposed term of imprisonment is well within statutory limits. Instead, his contention is that his presentence investigation report inaccurately attributed to him three misdemeanor convictions that belonged to another Thomas Miller and that this error, he says, continues to cause him problems with parole authorities. This does not make his *sentence* illegal.¹

Because Miller's motion is not one for correction of an illegal sentence, it is time-barred and the district court did not err in denying the motion. The district court's order denying Miller's motion to correct an illegal sentence is therefore affirmed.

Judge GUTIERREZ and Judge MELANSON **CONCUR.**

¹ We note that the record shows that in April 2009, and pursuant to Miller's earlier "motion to correct record," the district court wrote a letter to parole authorities informing them of the errors in Miller's PSI and that they are currently aware of the discrepancy. The fact that the three misdemeanor convictions were wrongly attributed to Miller did not, apparently, change their decision concerning Miller's parole or his request for commutation of his sentence.