

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 42248

STATE OF IDAHO,) 2015 Unpublished Opinion No. 439
)
Plaintiff-Respondent,) Filed: March 27, 2015
)
v.) Stephen W. Kenyon, Clerk
)
LAZARUS SALAZAR,) THIS IS AN UNPUBLISHED
) OPINION AND SHALL NOT
Defendant-Appellant.) BE CITED AS AUTHORITY
)
_____)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Molly J. Huskey, District Judge.

Order denying I.C.R. 35 motion for correction of sentences, affirmed.

Sara B. Thomas, State Appellate Public Defender; Jason C. Pintler, Deputy Appellate Public Defender, Boise, for appellant.

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

Before MELANSON, Chief Judge; LANSING, Judge;
and GUTIERREZ, Judge

PER CURIAM

Lazarus Salazar was found guilty of two counts of aggravated battery, I.C. §§ 18-903(a) and 18-907(a)(b); two corresponding deadly weapon sentence enhancements, I.C. § 19-2520; and two enhancements for committing the batteries with the intent to promote the activities of a criminal gang, I.C. § 18-8503. The district court sentenced Salazar to a unified term of thirteen years, with a minimum period of confinement of five years, for the first count of aggravated battery with an enhancement for intent to promote gang activity and a consecutive unified term of twenty-four years, with a minimum period of confinement of ten years, for the second count of aggravated battery, with enhancements for intent to promote gang activity and use of a deadly

weapon. Salazar appealed and this Court confirmed Salazar's judgment of conviction and sentences. *See State v. Salazar*, 153 Idaho 24, 278 P.3d 426 (Ct. App. 2012).

Salazar filed an I.C.R. 35 motion for correction of illegal sentences, asserting that his sentences were illegal because they were imposed consecutively. He asserted that the underlying aggravated batteries occurred during one continuing course of conduct, were charged in the same information, and tried at the same time to the same jury and therefore they must be considered a single conviction for sentencing purposes. He further argued that it was a violation of equal protection considerations to be sentenced for multiple enhancements. The district court denied Salazar's motion, finding that his sentences were not illegal. Salazar appeals.

In *State v. Clements*, 148 Idaho 82, 87, 218 P.3d 1143, 1148 (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. *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 was excessive. *Clements*, 148 Idaho at 87, 218 P.3d at 1148.

"Mindful" that the sentences imposed are legally permissible, Salazar asserts that the district court erred in denying his Rule 35 motion. The record supports the district court's finding that Salazar's sentences were not illegal. Therefore, the district court properly denied Salazar's motion and his sentences are well within the statutory maximum and not otherwise contrary to applicable law. Accordingly, we conclude no abuse of discretion has been shown and the district court's order denying Salazar's Rule 35 motion is affirmed.