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State v. Whitmore Respondent's Brief Dckt. 44180

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. WILLIAM DEAN WHITMORE, Defendant-Appellant.	)	Nos. 44180 & 44181 Bonneville County Case Nos. CR-2015-3555 & CR-2015-4657 RESPONDENT'S BRIEF

Issue

Is Whitmore's sentencing challenge barred by the doctrine of invited error?

Whitmore's Sentencing Challenge Is Barred By The Doctrine Of Invited Error

In case number 44180, the state charged Whitmore with possession of oxycodone and possession of methamphetamine with intent to deliver. (R., pp.162-65.) In case number 44181, the state charged Whitmore with delivery of methamphetamine. (R., pp.241-42.) Case number 44181 proceeded to trial and a jury found Whitmore guilty of delivery of methamphetamine. (R., p.355.) Subsequently, pursuant to a

binding Rule 11 plea agreement, Whitmore pled guilty to possession of methamphetamine with intent to deliver in case number 44180, the state dismissed the possession of oxycodone charge, and the parties agreed to jointly recommend concurrent unified sentences of 10 years, with three years fixed, for possession of methamphetamine with intent to deliver in case number 44180 and for delivery of methamphetamine in case number 44181. (Tr., p.319, L.17 – p.322, L.8; p.329, Ls.2-7.) The district court followed the plea agreement and imposed concurrent unified sentences of 10 years, with three years fixed, for the two offenses. (R., pp.168-71, 367-70, 372-75.) Whitmore filed a notice of appeal timely from the judgment of conviction in each case. (R., pp.177-80, 380-83.)

"Mindful of the invited error doctrine" and that he "received the sentence he requested," Whitmore nevertheless asserts that his aggregate unified sentence of 10 years, with three years fixed (for possession of methamphetamine with intent to deliver and delivery of methamphetamine), is excessive in light of his employment, family support, and purported remorse. (Appellant's brief, pp.4-6.) Whitmore's claim of an abuse of sentencing discretion is barred by the doctrine of invited error.

A party is estopped, under the doctrine of invited error, from complaining that a ruling or action of the trial court that the party invited, consented to or acquiesced in was error. State v. Carlson, 134 Idaho 389, 402, 3 P.3d 67, 80 (Ct. App. 2000). The purpose of the invited error doctrine is to prevent a party who "caused or played an important role in prompting a trial court" to take a particular action from "later challenging that decision on appeal." State v. Blake, 133 Idaho 237, 240, 985 P.2d 117,

120 (1999). This doctrine applies to sentencing decisions as well as to rulings during trial. State v. Leyva, 117 Idaho 462, 465, 788 P.2d 864, 867 (Ct. App. 1990).

On appeal, Whitmore acknowledges that he "received the sentence[s] he requested." (Appellant's brief, p.5.) Because Whitmore requested that that the district court impose concurrent unified sentences of 10 years, with three years fixed, for possession of methamphetamine with intent to deliver and for delivery of methamphetamine, he cannot claim on appeal that the district court abused its discretion by doing exactly that. Therefore, Whitmore's claim of an abuse of sentencing discretion is barred by the doctrine of invited error and Whitmore's convictions and sentences should be affirmed.

Conclusion

The state respectfully requests this Court to affirm Whitmore's convictions and sentences.

DATED this 17th day of January, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of January, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General