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State v. Fife Respondent's Brief Dckt. 44685

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44685
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR-2012-3466
)	
ALAN BRYAN FIFE, JR.,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Should Fife’s appeal be dismissed because he waived his rights to appeal his sentence and to file a Rule 35 motion?

Fife’s Appeal Should Be Dismissed Because He Waived The Rights To Appeal His Sentence And To File A Rule 35 Motion

The state charged Fife with aggravated battery, with a persistent violator enhancement. (R., pp.72-75.) Pursuant to a plea agreement, Fife pled guilty to aggravated battery, the state dismissed the enhancement, and the parties stipulated to the imposition of “a sentence of 3-10 years, with a 3 year probation.” (R., p.115.) As part of the plea agreement, Fife “waive[d] the

right to: (1) file a Rule 35 Motion regarding the initial Judgment (except as to an illegal sentence) and (2) appeal any issues in this case, including all matters involving the plea or the sentence” unless the court exceeded the state’s sentencing recommendation and/or recommendation for probation. (R., p.115.) The district court accepted Fife’s plea, imposed the agreed upon sentence, and placed Fife on probation for three years. (R., pp.136-59.)

In May 2014, the state filed a motion to revoke Fife’s probation, alleging Fife had violated the terms of his probation by failing to report to his probation officer as instructed, purchasing and using a semi-automatic handgun, failing to enroll in and complete Anger Management treatment as directed, admitting to smoking oxycodone and methamphetamine, being in possession of suboxone without a valid prescription, altering a UA test with a family member’s urine sample, and associating with multiple known felons. (R., pp.212-24.) Fife admitted two of the allegations, and the district court found the state proved all but one of the others. (R., pp.229-30.) The court revoked Fife’s probation and executed his underlying sentence, but retained jurisdiction. (R., pp.241-45.) Near the end of the retained jurisdiction period, on May 15, 2015, the district court suspended the balance of Fife’s sentence and reinstated him on probation for three years. (R., pp.253-58.)

In February 2016, Fife’s probation officer submitted a “Special Progress Report,” alerting the district court that Fife “missed several of his substance tests, and admitted to using Methamphetamine from 10/19/15 – 11/19/15,” that he “was sanctioned to increased random substance testing five times monthly,” but that he had “continued to miss several of his substance tests.” (R., p.259.) The officer also reported that Fife had been discharged from New Directions Aftercare and from RTR/Relapse Prevention group for non-compliance and failure to attend. (R., pp.259-61.) The state thereafter filed a motion to revoke Fife’s probation, alleging Fife had

violated his probation by failing to appear for multiple UA tests, admitting to using methamphetamine, and being discharged from his aftercare programs. (R., pp.262-70.) Following an evidentiary hearing, the district court found Fife in violation of his probation as alleged. (R., p.302.)

Before the disposition hearing on the aforementioned probation violations, the state filed another motion to revoke probation, alleging Fife had committed a battery while incarcerated in the Twin Falls County Jail. (R., pp.304-11.) Fife admitted the violation. (R., p.321.)

At the disposition hearing on all of the probation violations, Fife's counsel asked the court to execute Fife's sentence but to "use its authority under Rule 35 to reduce the fixed time from a three-year sentence to a two-year sentence." (10/4/16 Tr., p.30, Ls.17-21; see also p.33, Ls.11-13.) Noting that Fife had stipulated to the underlying sentence, the court denied the request, revoked Fife's probation, and executed his underlying sentence without reduction. (10/4/16 Tr. p.36, L.12 – p.37, L.1.) Fife filed a notice of appeal, timely from the district court's order revoking probation. (R., pp.329-36, 346-50.)

Fife asserts that the district court abused its discretion by denying his oral Rule 35 motion, contending the court "did not adequately consider" the "additional informational regarding the positive aspects of Mr. Fife's probationary period" that trial counsel presented at the disposition hearing. (Appellant's brief, p.4.) Fife's appeal should be dismissed because he stipulated to the imposition of the underlying sentence and specifically waived his rights to file a Rule 35 motion for reduction of that sentence and to appeal when he entered into the plea agreement.

The right of a criminal defendant to appeal matters relating to his conviction and/or sentence is a statutory right that may be waived. State v. Cope, 142 Idaho 492, 496, 129 P.3d

1241, 1245 (2006); State v. Murphy, 125 Idaho 456, 457, 872 P.2d 719, 720 (1994) (citing I.C. § 19-2801); State v. Taylor, 157 Idaho 369, 372, 336 P.3d 302, 305 (Ct. App. 2014); I.C.R. 11(f). When the waiver of the right to appeal is included as a term of a plea agreement, such waiver is enforceable as long as the record shows that it was voluntarily, knowingly, and intelligently made. Cope, 142 Idaho at 496, 129 P.3d at 1245; Murphy, 125 Idaho at 456, 872 P.2d at 719; State v. Holdaway, 130 Idaho 482, 484, 943 P.2d 72, 74 (Ct. App. 1997).

As part of the plea agreement in this case, Fife stipulated to the imposition of an underlying unified sentence of 10 years, with three years fixed. (R., p.115.) He also waived his rights to file a rule 35 motion and to appeal, as follows:

By accepting this offer the defendant waives the right to: (1) file a Rule 35 Motion regarding the initial Judgment (except as to an illegal sentence) and (2) appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court, including all suppression issues. However, the defendant may appeal the sentence if the Court exceeds: (1) the ~~determinate portion~~ of the State's sentencing recommendation, and/or (2) the State's recommendation of probation, and/or (3) the State's recommendation of retained jurisdiction.

(R., p.115 (underlining and strike-through in original).)

Fife's waivers were broad and ambiguous and included both the waiver of the right to file a Rule 35 motion challenging the stipulated sentence imposed in the initial judgment, as well as the waiver of the right to appeal "any issues in this case, including all matters involving the plea or the sentence." (R., p.115.) Because Fife waived his right to seek a reduction of the sentence to which he stipulated and also waived his right to appeal "all matters involving the plea or sentence," his appeal from the denial of his oral Rule 35 motion should be dismissed. See Taylor, 157 Idaho at 372-73, 336 P.3d at 305-06 (dismissing appeal from denial of Rule 35 motion because "Taylor's plea agreement, which waives the right to appeal any issues 'involving

sentencing,' unambiguously includes waiver of the right to present this appeal from the denial of his Rule 35 motion for reduction of sentence”).

Even if this Court considers the merits of Fife’s appellate argument, he has failed to establish any abuse of discretion in the denial of his Rule 35 motion. After the district court imposed the stipulated sentence and placed Fife on probation for aggravated battery, Fife repeatedly violated the terms and conditions of his release by using illegal substances, missing UA appointments, altering UA tests, being discharged from treatment and aftercare programs, and committing new crimes, including committing another violent crime—battery—while incarcerated. (R., pp.212-24, 229-30, 259-70, 302, 304-11, 321.) As noted by the district court at the last disposition hearing, Fife stipulated to the sentence he received and “knew the potential, what would happen if [he] ever violated probation.” (10/4/16 Tr., p.36, Ls.12-21.) Fife’s decisions to repeatedly violate the terms of his probation, despite knowing the consequences, did not entitle him to a reduction of sentence.

That the court exercised sound judgment in finding the sentence it had imposed was reasonable is only highlighted by Fife’s behavior immediately after the court announced it would not reduce his sentence. Upon being remanded to the custody of the sheriff, Fife directed a number of expletives at the court, stating: “Stand up, mother fucker. ... Fucking piece of shit. Stand up in that dress. Fucking piece of shit. Move, man. Three fucking – ten years, really? Fuck out of here.” (10/4/16 Tr., p.37, Ls.4-8.)

The district court’s decision to deny Fife’s Rule 35 motion was reasonable in light of Fife’s history of probation violations, his failure to be rehabilitated or deterred despite prior treatment opportunities and legal sanctions, and his display of utter contempt for the court and its orders. Fife has failed to establish an abuse of discretion.

Conclusion

The state respectfully requests that this Court dismiss Fife's appeal or, alternatively, affirm the district court's order revoking Fife's probation and denying his oral Rule 35 motion.

DATED this 11th day of October, 2017.

_/_s/ Lori A. Fleming _____
LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 11th day of October, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

REED P. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

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

_/_s/ Lori A. Fleming _____
LORI A. FLEMING
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