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### State v. Boundy Respondent's Brief Dckt. 45261

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45261
Plaintiff-Respondent,	)	
	)	Twin Falls County Case No.
v.	)	CR42-16-6037
	)	
ANTHONY JOHN BOUNDY,	)	
	)	RESPONDENT’S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

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

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

Pursuant to a plea agreement, Boundy pled guilty to possession of methamphetamine; the state agreed to not file a persistent violator enhancement and to recommend a unified sentence of seven years, with two years fixed, to run consecutively to his sentences in Gooding County case number CR-2009-1006, Ada County case number CR-2009-11600, and Twin Falls County case

numbers CR-2012-5575 and CR-2013-14143; and Boundy waived his rights 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,” unless the district court exceeded the two-year fixed portion of the state’s sentencing recommendation. (R., pp.111, 122 (emphasis and parenthetical notation original).) The district court imposed the sentence recommended by the state. (R., pp.139-45.) Boundy filed a notice of appeal timely, under the prison mailbox rule,<sup>1</sup> from the judgment of conviction. (R., pp.155-56.) He also filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.162-67, 186-90.)

Mindful that he waived his right to appeal his sentence and his right to file a Rule 35 motion for a reduction of sentence, Boundy nevertheless asserts both that his sentence is excessive and that the district court abused its discretion by denying his Rule 35 motion for sentence reduction in light of his difficult childhood, “worthwhile accomplishments,” and mental and physical health issues. (Appellant’s brief, pp.2-6.) Boundy’s appeal should be dismissed because he specifically waived his rights to appeal his sentence and to file a Rule 35 motion for a reduction of sentence when he entered into the plea agreement.

The waiver of the right to appeal as a component of a plea agreement is valid and will be enforced if it was made voluntarily, knowingly and intelligently. State v. Murphy, 125 Idaho 456, 872 P.2d 719 (1994). The waiver of the right to appeal a sentence incorporates the right to

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<sup>1</sup> Under the “mailbox rule,” notices of appeal and post-conviction petitions filed by inmates are deemed to be filed on the date they are delivered to prison officials for filing with the court. State v. Lee, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990), *cited with approval in* Munson v. State, 128 Idaho 639, 917 P.2d 796 (1996).

appeal from the denial of a Rule 35 motion. *See State v. Rodriguez*, 142 Idaho 786, 787, 133 P.3d 1251, 1252 (Ct. App. 2006); *State v. Taylor*, 157 Idaho 369, 372-73, 336 P.3d 302, 305-06 (Ct. App. 2014) (defendant waived his right to appeal the denial of his motion for reduction in sentence where defendant's plea agreement stated that he waived his right to file a motion for reduction of sentence and his right to appeal issues involving sentencing in the case).

Pursuant to the plea agreement, signed by Boundy, Boundy waived both his right to file a Rule 35 motion (except as to an illegal sentence) and his right "to appeal any issues in this case, including all matters involving the plea or the sentence and any rulings made by the court," unless the district court exceeded the two-year fixed portion of the state's sentencing recommendation. (R., p.122 (emphasis original).) Because the district court did not exceed the state's sentencing recommendation, Boundy did not retain his right to appeal. (R., pp.122, 139-45.)

At the guilty plea hearing, the district court reviewed the Rule 11 plea agreement and found that Boundy had entered his plea knowingly, voluntarily and intelligently, and Boundy has not challenged that determination on appeal. (R., p.111.) Instead, Boundy acknowledges, on appeal, that he waived his rights to appeal his sentence and to file a Rule 35 motion for a reduction of sentence. (Appellant's brief, pp.2, 4, 6.) To allow an appellate challenge in these circumstances would allow Boundy to evade the appeal waiver in his plea agreement. Because Boundy specifically waived his rights both to appeal his sentence and to file a Rule 35 motion for sentence reduction, he cannot challenge either his sentence or the denial of his Rule 35 motion for a reduction of sentence on appeal, and his appeal should be dismissed.

Conclusion

The state respectfully requests this Court to dismiss Boundy's appeal because he waived his rights to appeal his sentence and to file a Rule 35 motion for a reduction of sentence.

DATED this 1st day of May, 2018.

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

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of May, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

LARA E. ANDERSON  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

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