

Uldaho Law

Digital Commons @ Uldaho Law

Not Reported

Idaho Supreme Court Records & Briefs

4-9-2018

State v. Eckley Respondent's Brief Dckt. 45423

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Eckley Respondent's Brief Dckt. 45423" (2018). *Not Reported*. 4489.
https://digitalcommons.law.uidaho.edu/not_reported/4489

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ Uldaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ Uldaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45423
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-2017-576
)	
VIRGIL ECKLEY,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Should Eckley's appeal be dismissed because he waived his right to appeal his sentence?

Eckley's Appeal Should Be Dismissed Because He Waived The Right To Appeal His Sentence

Pursuant to a plea agreement, Eckley pled guilty to lewd conduct with a minor under 16 and waived 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 state's recommendation regarding the determinate portion of the sentence. (R., pp.140-50.) At sentencing, the state recommended a unified sentence of 40 years, with 20 years fixed. (9/5/17

Tr., p.13, Ls.22-24.) The district court imposed a unified sentence of 28 years, with 14 years fixed. (R., pp.173-79.) Eckley filed a notice of appeal timely from the judgment of conviction. (R., pp.180-84.)

“Mindful that Mr. Eckley waived his right to appeal,” he nevertheless asserts that his sentence is excessive in light of his substance abuse issues, mental health issues, family support, and his remorse. (Appellant’s brief, pp.3-5.) Eckley’s appeal should be dismissed because he specifically waived his right to appeal his 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).

Pursuant to the plea agreement signed by Eckley, he waived his right to appeal his sentence as long as the district court did not exceed the state’s recommendation regarding the determinate portion of his sentence. (R., p.150.) Eckley also completed a guilty plea advisory form, in which he specifically acknowledged he could appeal his sentence “only if judge exceeds fixed time recommended by the state.” (R., p.143.) The district court subsequently found that Eckley had entered his plea knowingly, voluntarily, and intelligently (7/21/17 Tr., p.8, L.16 – p.17, L.9), and Eckley does not challenge that determination on appeal. At sentencing, the state recommended that the court impose a unified sentence of 40 years, with 20 years fixed. (9/5/17 Tr., p.13, Ls.22-24.) The district court imposed a unified sentence of 28 years, with 14 years fixed. (R., pp.173-79.) Because the district court did not exceed the determinate portion of the state’s recommendation, Eckley did not retain his right to appeal. Additionally, Eckley acknowledges, on appeal, that he waived his right to appeal his sentence. (Appellant’s brief, p.3.) To allow an appellate to challenge in these circumstances would allow Eckley to evade the

appeal waiver in his plea agreement. Because Eckley specifically waived his right to appeal his sentence, he cannot challenge his sentence on appeal and his appeal should be dismissed.

Conclusion

The state respectfully requests this Court to dismiss Eckley's appeal because he waived his right to appeal his sentence.

DATED this 9th day of April, 2018.

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

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of April, 2018, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ELIZABETH ANN ALLRED
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