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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45523
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-16-12259
)	
ROY ANDREW DENMAN,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Should Denman’s appeal be dismissed because he waived his right to appeal his sentence?

Denman’s Appeal Should Be Dismissed Because He Waived The Right To Appeal His Sentence

Pursuant to a plea agreement, Denman pled guilty to possession of methamphetamine, the state agreed to recommend the retained jurisdiction program and a unified sentence of six years, with four years fixed, and Denman 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 for a period of retained jurisdiction and/or the four-year fixed portion of the sentence. (R., pp.83-85, 154-55; Tr., p.66, L.20 – p.67, L.18.) The district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R., pp.180-85.) Denman filed a notice of appeal timely from the judgment of conviction. (R., pp.189-92.)

“Mindful of the appeal waiver,” Denman nevertheless asserts that his sentence is excessive in light of his health problems, substance abuse issues, and employment. (Appellant's brief, pp.2-4.) Denman'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 Denman, Denman waived his right to appeal his sentence as long as the district court did not exceed the state's recommendation of four years for the “determinate portion of the sentence” and/or the recommendation for a period of retained jurisdiction. (R., p.155.) At the guilty plea hearing, the district court recited the terms of the plea agreement and the appeal waiver, and Denman confirmed that he understood that he was waiving his right to appeal his sentence unless the court “exceeded the four-year fixed part of the State's recommendation, or if [the court] exceeded a retained jurisdiction disposition.” (Tr., p.67, Ls.11-20.) The district court subsequently found that Denman had entered his plea knowingly, voluntarily, and intelligently, and Denman has not challenged that determination on appeal. (R., p.154; Tr., p.70, Ls.5-14.) At sentencing, the district court imposed a unified sentence of seven years, with only *two* years fixed, and retained jurisdiction. (R., pp.180-85.)

Because the district court did not exceed either the determinate portion of the state's recommendation or the recommendation for a period of retained jurisdiction, Denman did not retain his right to appeal. Additionally, Denman acknowledges, on appeal, that he "waived his right to appeal his sentence." (Appellant's brief, p.3.) To allow an appellate challenge in these circumstances would allow Denman to evade the appeal waiver in his plea agreement. Because Denman 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 Denman's appeal because he waived his right to appeal his sentence.

DATED this 20th day of March, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 20th day of March, 2018, 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