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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45787
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-17-5565
)	
FELIZA RAE FAIRBANKS,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Should Fairbanks’ appeal be dismissed because she waived her right to appeal her sentence?

Fairbanks’ Appeal Should Be Dismissed Because She Waived The Right To Appeal Her Sentence

Pursuant to a plea agreement, Fairbanks pled guilty to possession of methamphetamine and the state agreed to recommend a unified sentence of seven years, with three years fixed. (R., pp.35-37, 48-49.) As part of the plea agreement, Fairbanks waived her right to appeal her

sentence unless the district court exceeded the state’s recommendation. (R., p.49.) The district court imposed a unified sentence of seven years, with two years fixed. (R., pp.75-80.) Fairbanks filed a notice of appeal timely from the judgment of conviction. (R., pp.84-88.)

“Mindful that she waived her right to appeal,” Fairbanks nevertheless asserts that her sentence is excessive in light of her substance abuse and desire for treatment, mental health issues, family support, and purported remorse. (Appellant’s brief, pp.3-5.) Fairbanks’ appeal should be dismissed because she specifically waived her right to appeal her sentence when she 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 Fairbanks, Fairbanks waived her 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 three-year determinate portion of state’s sentencing recommendation. (R., p.49 (emphasis original).) At the guilty plea hearing, the district court reiterated that, as part of the plea agreement, Fairbanks was waiving her right to appeal her sentence “unless the Court exceeded the three-year fixed part of the State’s recommendation,” and Fairbanks confirmed that she understood the waiver. (7/17/17 Tr., p.5, L.23 – p.6, L.8.) The district court subsequently found that Fairbanks had entered her plea knowingly, voluntarily, and intelligently, and Fairbanks has not challenged that determination on appeal. (R., p.48; 7/17/17 Tr., p.8, Ls.3-9.) At sentencing, the district court imposed a unified sentence of seven years, with only two years fixed – a lesser sentence than the one recommended by the state. (R., pp.75-80.) Because the district court did not exceed the state’s sentencing

recommendation, Fairbanks did not retain her right to appeal. To allow an appellate challenge in these circumstances would allow Fairbanks to evade the appeal waiver in her plea agreement. Because Fairbanks specifically waived her right to appeal her sentence, she cannot challenge her sentence on appeal and her appeal should be dismissed.

Conclusion

The state respectfully requests that this Court dismiss Fairbanks’ appeal because she waived her right to appeal her sentence.

DATED this 18th day of September, 2018.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of September, 2018, served a true and correct copy of the attached RESPONDENT’S BRIEF to the attorney listed below by means of iCourt File and Serve:

ELIZABETH ANN ALLRED
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/s/ Lori A. Fleming
LORI A. FLEMING
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