

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  
E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46589-2018
Plaintiff-Respondent,	)	
	)	Twin Falls County Case No.
v.	)	CR42-18-1713
	)	
GABRIEL DURAN,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

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

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

The state charged Duran with possession of methamphetamine and/or amphetamine. (R., pp.28-30.) Pursuant to a plea agreement, Duran pled guilty to possession of methamphetamine; the state agreed to "recommend a sentence of two (2) years fixed and five (5) years determinate, to be served"; and Duran waived his rights to "file a Rule 35 Motion regarding the initial

Judgment (except as to an illegal sentence)” and 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 determinate portion of the state’s sentencing recommendation and/or the state’s recommendation for probation and/or for a period of retained jurisdiction. (R., pp.43-53 (parenthetical notations and emphasis original).) At sentencing, the state recommended that the district court “enter a judgment as such in our offer,” which was a unified sentence of seven years, with two years fixed. (R., p.53; 11/19/18 Tr., p.5, Ls.19-20.) The district court imposed a unified sentence of six years, with two years fixed. (R., pp.65-72.) Duran filed a notice of appeal timely from the judgment of conviction. (R., pp.73-75.)

“Mindful of the plea agreement,” Duran nevertheless asserts his sentence is excessive in light of his acknowledgment of his substance abuse, desire for treatment, and support from a friend. (Appellant’s brief, pp.2-4.) Duran’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 Duran, Duran waived his right to appeal his sentence as long as the district court did not exceed the state’s sentencing recommendation. (R., p.53.) At the guilty plea hearing, the district court found that Duran had entered his plea knowingly, freely, and voluntarily, and Duran has not challenged that determination on appeal. (R., p.42; 9/7/18 Tr., p.10, L.23 – p.11, L.4.) At sentencing, the district court imposed a unified sentence of six years, with two years fixed—a lesser sentence than that recommended by the

state. (11/19/18 Tr., p. 5, Ls.19-20, p.12, Ls.6-8; R., p.53.) Because the district court did not exceed the state’s recommendation, Duran did not retain his right to appeal.

On appeal, Duran concedes that he “waived his right to appeal the sentence in this case.” (Appellant’s brief, p.3.) To allow an appellate challenge in these circumstances would allow Duran to evade the appeal waiver in his plea agreement. Because Duran 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 that this Court dismiss Duran’s appeal because he waived his right to appeal his sentence.

DATED this 8th day of August, 2019.

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

ALICIA HYMAS  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of August, 2019, served a true and correct copy of the attached RESPONDENT'S BRIEF to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us).

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