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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 46598-2018
Plaintiff-Respondent,)	
)	Twin Falls County Case No.
v.)	CR42-18-3603
)	
MICHAEL ALLEN CURTIS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

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

Curtis' 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, Curtis pled guilty to possession of methamphetamine; the state dismissed a charge of possession of marijuana and agreed to not file a persistent violator enhancement; the parties stipulated to a unified sentence of seven years, with three years fixed;

and Curtis 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 state’s sentencing recommendation. (R., pp.18-20, 27, 38 (parenthetical notation and emphasis original).) At sentencing, in accordance with the plea agreement, the state recommended a unified sentence of seven years, with three years fixed. (Tr., p.6, Ls.20-24.) The district court followed the state’s recommendation and imposed a unified sentence of seven years, with three years fixed. (R., pp.44-47; Tr., p.11, L.25 – p.12, L.3.) Curtis filed a timely Rule 35 motion for a reduction of sentence, which the district court denied, concluding that Curtis had waived his right to file a Rule 35 motion for a reduction of sentence pursuant to his plea agreement. (R., pp.51-52, 55-61.) Curtis filed a notice of appeal timely only from the district court’s order denying his Rule 35 motion for a reduction of sentence. (R., pp.62-64.)

Mindful that he “waived the right to file a Rule 35 motion and the right to appeal,” Curtis nevertheless asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence because he submitted a letter stating he had a support network, a family to support, “full-time employment arranged,” and he was “taking his medications.” (Appellant’s brief, pp.1, 3-4.) Curtis’ appeal should be dismissed because he specifically waived his rights to appeal his sentence and to file a Rule 35 motion 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 appeal from the denial of Rule 35. *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 Curtis, Curtis 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 recommendation made by the State at sentencing regarding: (1) the determinate portion of the sentence, and/or (2) a probation recommendation, and/or (3) a retained jurisdiction recommendation." (R., p.38 (emphasis original).) Curtis entered his plea knowingly, voluntarily and intelligently, and Curtis has not challenged that determination on appeal. (R., p.27.) At sentencing, consistent with the plea agreement, the state recommended "the imposition of a sentence, that sentence of seven years consisting of three years fixed, four years indeterminate, to serve concurrent with the other two sentences he's currently serving." (Tr., p.6, Ls.20-24.) The district court followed the state's recommendation and imposed "a seven-year unified sentence consisting of a three-year fixed term and a four-year indeterminate term that will be served concurrent with [Curtis'] 2013 cases." (Tr., p.11, L.25 – p.12, L.3; R., pp.44-47.) Because the district court did not exceed the state's recommendation, Curtis did not retain either his right to appeal his sentence or his right to file a Rule 35 motion for a reduction of sentence.

On appeal, Curtis acknowledges that he "waived his right to file a Rule 35 motion and the right to appeal its denial." (Appellant's brief, p.3.) Because Curtis specifically waived his rights both to appeal his sentence and to file a Rule 35 motion for a reduction of sentence, he cannot

challenge 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 Curtis' appeal because he waived his rights to appeal his sentence and to file a Rule 35 motion for a reduction of sentence.

DATED this 6th day of May, 2019.

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

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 6th day of May, 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:

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/s/ Lori A. Fleming
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